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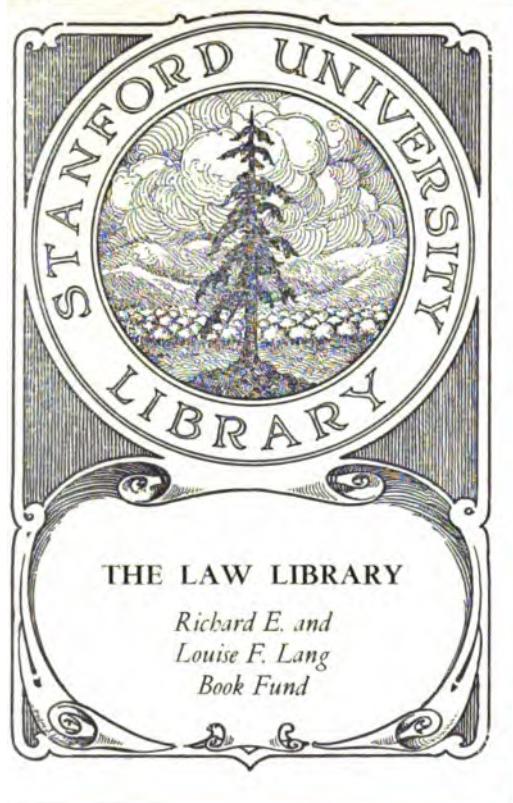
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MAGUIRE.

A REPORT OF THE PROCEEDINGS ON THE
TRIAL OF THE CASE OF MAGUIRE AND
OTHERS VERSUS MAGUIRE.

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A REPORT

OF THE

PROCEEDINGS ON THE TRIAL

OF THE CASE

MAGUIRE AND OTHERS

VERSUS

MAGUIRE.

TRIED BEFORE MR. BARON FITZGERALD

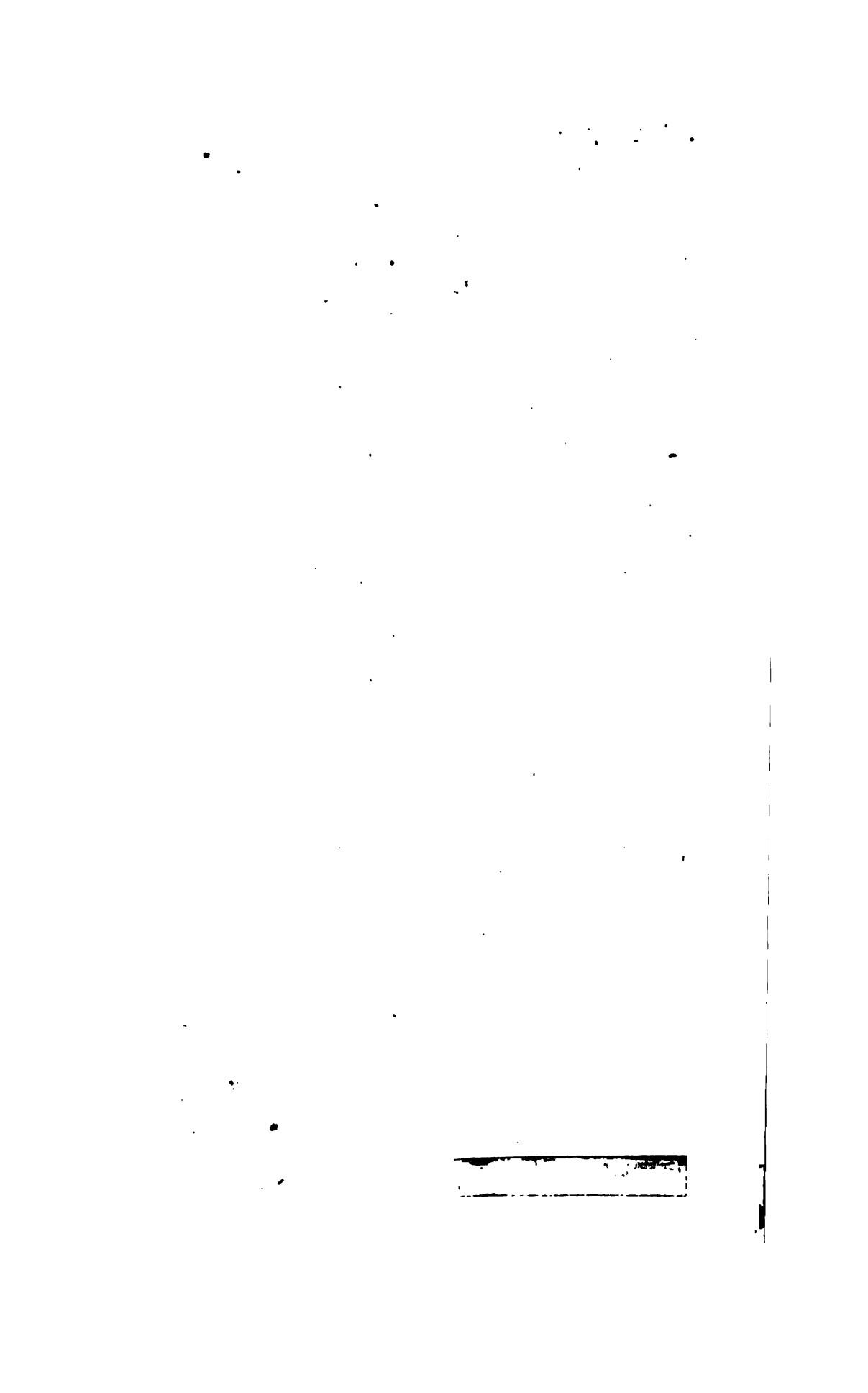
And a Special Jury of the County of Dublin,

AT THE COURT OF EXCHEQUER,

DURING THE Sittings AFTER THE MICHAELMAS TERM, 1864.

DUBLIN:

W. B. KELLY, 8 GRAFTON STREET.
1864.



Jane Maguire, defendant

A REPORT

OF THE

PROCEEDINGS ON THE TRIAL

OF THE CASE OF

MAGUIRE AND OTHERS

VERSUS

MAGUIRE.

TRIED BEFORE MR. BARON FITZGERALD

And a Special Jury of the County of Dublin,

AT THE COURT OF EXCHEQUER,

DURING THE Sittings AFTER MICHAELMAS TERM, 1863.

DUBLIN:

W. B. KELLY, 8 GRAFTON STREET.

1864.

Mr. Sergeant Armstrong, Mr. Charles R. Barry, Q.C., and
Mr. John B. Murphy, instructed by Mr. John P. Kavanagh, of 7 Lower
Gloucester Street, Dublin, appeared for the Plaintiffs; the Right
Hon. James Whiteside, Q.C., Mr. John Edward Walshe, Q.C., and
Mr. J. H. Byrne, instructed by Mr. John Martin, 109 Lower Gardiner
Street, Dublin, for the Defendant.

P R E F A C E.

WHILST I have hitherto abstained from expressing anything in the public prints regarding the trial of Maguire *v.* Maguire, I did so solely because the case was yet under discussion in a court of law. If I now bring my name before the public, it is not either to engage as a partisan, or to vindicate my own conduct. But the gross misstatements and calumnies that have appeared in some of the public papers, especially an article in the London *Times* of the 5th of last December, demanded a refutation upon other than merely personal grounds. On all hands it is acknowledged that there is at issue a grave practical question; for it affects religion morally and socially, therefore it is of the utmost importance that the public should form a correct opinion. To form that opinion there should be a calm and dispassionate inquiry. The case ought not to be tried by religious prejudice or political passion, but by the sworn evidence, and the sworn evidence alone. With this view, I have prepared the following pages for the public press, and have taken the sworn evidence almost exclusively from sources that cannot be suspected of being over favourable to Catholic interests—the daily Conservative papers of the city. I now leave to an impartial public to judge whether, as stated in the *Times* in an article appended to this report, “Mr. Keon refused to give Maguire absolution until he had signed a will, consigning the children to his own custody, to be educated in the creed of the true Church”; or “did he avail himself of the wife’s absence to bring a testamentary paper, ready drawn up, provided two strangers to act as witnesses, and withheld the

sacrament until it was duly executed". As to the monstrous calumnies that have been so lavishly cast on the Catholic Church and its teachings, they are so shameless that I will not deign to notice them, but, for a true exposition of Catholic doctrine I would simply refer to the able and eloquent address of my friend and counsel, Mr. Barry.

WILLIAM KEON.

PRESBYTERY, ARRAN QUAY,
21st January, 1864.

This case was tried before Mr. Baron Fitzgerald and a Special Jury, comprised as follows:

HENRY ALLEY,
GEORGE ARMSTRONG,
CONWAY BLIZARD,
FRANCIS ASKEN,*
JAMES JONES,
EDWARD HIGGINBOTHAM,

JEREMIAH HANKE,
THOMAS FOLEY,*
DANIEL HEFFERNAN,
LUCIUS H. DEERING,
JOSEPH R. FITZGERALD,
EDWARD ROTHWELL.

* The gentlemen whose names are marked with an asterisk are Roman Catholics.

R E P O R T .

MAGUIRE AND OTHERS *versus* MAGUIRE.

The pleadings were opened by Mr. Murphy. He said that the action was brought by the plaintiffs as the testamentary guardians of the children of a man named Michael Maguire, and they complained that under the will of the said Michael Maguire they were entitled to be the guardians of the children, who are under twenty-one years of age, and that the defendant detained those children from their custody. The defendant pleaded that the said Michael Maguire did not make his last will and testament as alleged, that he did not dispose of his children as alleged; and the issue to be tried was whether he made the alleged will, and whether he disposed of his children as alleged.

Sergeant Armstrong stated the plaintiffs' case. He said it was an action somewhat peculiar in its nature, but he would shortly explain to them the circumstances out of which it had arisen, so that they (the jury) might readily comprehend the question they had to try. The plaintiffs complained that by the will of Michael Maguire they were the testamentary guardians of his children; but that the defendant, who is the mother of the children, kept them from their custody, and refused to give them up to the plaintiffs, who are by law their legal guardians. It was not necessary to tell the jury that by the law of this country it was permitted to any father, being of full age and in his senses, to make a will disposing of the custody of the persons of his children after his death, and the plaintiffs alleged that Michael Maguire, who was in his lifetime the husband of the defendant, exercised that right and disposed of the custody and tuition of his children after his own death. He exercised that right fairly, and at a time when he was in perfect possession of all his mental faculties. He had been from his nativity a member of the Catholic Church, as were all his family and connections. His brother, Patrick, whom he, by his will, appointed one of the guardians of his children, was also at all times a Catholic. Some six or seven years ago it would appear that Michael Maguire married the present defendant—the marriage was what was commonly called a mixed marriage, he being a Roman Catholic and

she a Protestant. He had been by trade an iron moulder, and for some years before his marriage, and for two or three years after, had pursued that trade. About three years ago he went to England to follow that trade, hoping to get better wages there than at home. At the time he went to England, two of the children of the marriage had been born, the elder, Eliza Jane, and the second, Sarah. These children were baptized in the chapel of the parish in which they were born. Their father resided at that time in St. Paul's parish, and the children were baptized according to the rites of the Catholic Church, in St. Paul's Catholic Church, on Arran Quay. The Catholic Church considered it essential to have the Sacrament of Baptism administered as soon after the birth of the child as convenient. Eliza Jane was baptized on the 15th of January, 1858, and was, therefore, a few days old at that time. The second child was baptized on the 5th of March, 1860, that child having been then a newly-born infant. It was after the birth of these two children that their father went to England, his wife with him. He was a mere tradesman, and as the wages were not remunerative, it was an object to himself and to his wife to have the children cared at home, and not to take them with them. At all events, the children were left with Mrs. Maguire's father and mother, who were Protestants. It was usual in this city to send children to school at an astonishingly early age, of the judiciousness of which he would not speak. Mrs. and Mr. Lambert, however, sent those young children to a Protestant infant school in their neighbourhood, where they imbibed such instructions as their tender years would permit. While Maguire and his wife were in England, a third child, Emily, was born, and it would appear that her baptism was delayed until the return of this couple from England. Maguire died on the 10th of May in the present year. His wife came from England nine or ten months before that, and he came in about three months after her. He held in his hand the certificates of the baptism of the three children. They were all baptized in the Roman Catholic Church of St. Paul, Arran Quay, and at each baptism Mrs. Maguire attended. During the father's lifetime there never was any difference of opinion between the father and mother as to the rearing of the children in the Catholic faith. The father was a struggling man, and it was an object to him to agree to live in the house of the wife's father and mother, in Hendrick Street, Mr. and Mrs. Lambert. The grandfather and grandmother sent two of the children to a Protestant school, but, as they were very young, the father did not make much objection. The father had heart disease, and a

month before his death he sent for the Rev. Mr. Keon, who heard his confession. Mr. Keon visited him the next day, and the man being undoubtedly a Catholic, he spoke to him about his children. Maguire told him they were in a Protestant school, and that as he was very much dependant upon Mr. and Mrs. Lambert, he had not been disposed to cause any disturbance in the family on the subject. Seeing it was the dearest wish of the man's heart to have his children brought up as Catholics, he suggested to Maguire to make a will appointing Catholic guardians for his children. Maguire naturally agreed to this, and a conversation took place as to the appointment of guardians. Maguire objected to his own brother, observing that, like himself, he was not a good Catholic, but that he would be glad to appoint a good Catholic, whom he knew, named Pat. Gilligan, who was a member of the Confraternity at Phibsborough. The Rev. Mr. Keon consented, if Maguire wished, to act as another guardian, and at Maguire's request he prepared a will, directing that the children should be reared Catholics. The Rev. Mr. Keon thought it would be only right, notwithstanding Michael Maguire's objection, that his brother should be one of the guardians, he being the uncle. When this was mentioned to Michael Maguire, he said, "Very well", and he gave Mr. Keon the Christian names of both his brother and Mr. Gilligan; and the Rev. Mr. Keon, thus informed, filled up the two blanks he had left in the will. The jury would be satisfied that Mrs Maguire knew well what was going on relative to the will. Mr Keon left the will with Mr. Maguire on the 26th, and on the night of the same day Mr. Keon was called on to promptly attend on Maguire, and that night Maguire executed the will. On that occasion Mr. Keon administered the last rites of the Church to him. They parted on the understanding that, if Maguire did not die then, the will should be more formally executed before witnesses, which could not be done at the dead hour of night. On the morning of the 27th Maguire sent to Mr. Keon for the paper, which Mr. Keon gave to the messenger. The same day Gilligan called on Mr. Keon, and said Maguire wanted to execute the will, and Mr. Michael Donohoe, at their request, witnessed the execution of the will. There were there present, Mr. Keon, Michael Donohoe, Patrick Gilligan, and Michael Maguire. He read the paper aloud from first to last to the two witnesses, and he chose to sign the will a second time, and did so before the witnesses. He (counsel) did not understand that the capacity of Michael Maguire to make a will was ever, or could be, questioned. He died of heart disease, which, they all knew, never affected the intellect. There could be no doubt that the man knew

well what he was doing. There are institutions for educating the children of mixed marriages. The people who maintained these institutions he was sure believed they were doing a very commendable thing. To a woman like Mrs. Maguire, left without means, it was a great inducement to have her children supported and reared without any cost to her, the more so as she was a Protestant. But with eternity staring Maguire in the face, and he being a Catholic, if he wished or desired to have his children reared in the same faith, and if, when he was dead, Mr. Keon and the other guardians endeavoured to discharge the duty to him and the children, which they undertook to him to do, were they to blame? Was it not natural and right that they should endeavour honestly to carry out the dead man's wishes? The father died on the 10th of May, and in June the guardians applied to the mother for the children; but they had no wish to take the babe from the mother until their duty should arise. It was different as to the two elder girls. The learned gentleman stated the legal proceedings that followed—the writ of *habeas corpus*, and the impeachment of the will by the mother's return, as having been obtained by undue influence. This meant to the guardians, prove your will; and this led to the present action, which was in the nature of an issue. Undue influence meant coercion or fraud, and the person who alleged that, must prove it clearly and distinctly, and that the fraud or coercion was brought to bear upon the man, depriving him of his own judgment, and reducing the substantiality of the act to a mere form. Fraud could not be presumed. If they said that Michael Maguire, a Catholic all his life, was induced by fraud to direct that his children, who had been baptized in the Catholic faith, should be reared in his own faith, he would be surprised. Was it not the most natural thing in the world that this Catholic father should direct his children to be reared Catholics? Was it not natural that the priest should do what he did? Would not any Protestant father and Protestant clergyman do the same? It was the bounden duty of Mr. Keon to speak to Maguire respecting the faith of his children, and to endeavour to carry out the father's wishes, and if he did less he would have failed in his duty. That was all Mr. Keon did, and all that was done was done honestly, done fairly, and done reasonably.

The Rev. Mr. Keon, St. Paul's, Arran Quay, being then sworn, was examined by Mr. Barry, Q.C., as follows:

I am a curate of St. Paul's Parish; on the 24th of April last I was called to attend Michael Maguire, at No. 9 Hendrick Street. I went in the usual course of my duty attending sick calls; he lived in the top front room; I heard his confession, and promised

to call next day, and I did so; on that second occasion he said to me (not in confession) that since he saw me he had suffered annoyance from his mother-in-law because he did not allow the children to go to a Protestant school; on the first occasion I had no conversation with him outside confession; I asked him on the second day, when he told me about his mother-in-law, why did he allow the children to go to a Protestant school; he said he was very delicate, that he was dependant upon his father-in-law; that the children were young, and that he did not wish to create any disturbance in the house; he also said that he had intended before he saw me take a house of his own, and to send his children to a Catholic school; I thought it my duty to tell him that the law enabled him to make a will, appointing testamentary guardians, and I suggested to him to do so; he at once consented; he was too poor to pay a solicitor; I said I would draw the will, and let him execute it; I asked him whom would he wish to appoint guardians; I asked him had he a brother or other relative; he said he had a brother, but that he was not attentive to his religious duties, like himself, and that therefore he would not wish to appoint him to see that his children would be reared in the Catholic faith; but that he knew a Mr. Gilligan, a good practical Catholic, a member of the Phibsborough confraternity, and that he would like to appoint him and see that his children were reared Catholics; I offered myself to act as a guardian, and he seemed grateful to me, and said, very well; I prepared the will now produced, leaving blanks to be filled up by Maguire; the blanks were for the Christian names of the brother and Gilligan; I made the brother, P. Maguire, a guardian on the 26th; the next day I went to Michael Maguire again and told him I had drawn up a form of will, but that on reflection I considered he ought to appoint his own brother as a guardian; he at once agreed, and I then read for him the document and left it with him to execute; I asked him what witnesses he would have, and he told me he would get Gilligan and a man named Scully; I left the will with him; he told me the Christian names of his brother and of Gilligan; he told me where to get ink, and I then filled in the blanks, and also a blank for the number of his brother's house, which he told me; I went away, leaving the document with him, and about the middle of that night I was sent for to go to him; I went, and on entering the room asked him did he execute the will; he said he had no opportunity; I then, seeing he was very ill, asked him to put his name to the paper as an expression of what he would wish, and he at once assented, and did so; I then heard his confession and administered the last sacraments; I told him I would take the paper, and he could send next day for it

to execute it legally, and he said he would; during that interview he had a sound, clear mind; next morning a messenger came to me from Michael Maguire, and I gave her the paper writing; Gilligan called on me in about two hours after I gave the will to the messenger; I did not know Gilligan before, but I now knew that he was the man whom the testator mentioned to me as a witness; I called on Mr. Michael Donohoe, and asked him would he witness a will; he said he would, and we three proceeded to the room of Michael Maguire; I told him that instead of Scully, I had got Mr. Donohoe to act as a witness; I asked Michael Maguire to read the will for us all; he read it aloud in a clear voice; he took a pen and ink and wrote his name under where he had written his name the night before; he wrote his name in the presence of the witnesses and myself; before he wrote his name, Gilligan said to me in Michael Maguire's presence, "would it not be well to have Mrs. Maguire present?" I said certainly; she was called, and some one on the stairs cried out that she was not there; the testator's mental condition was perfectly clear and sound; after the will had been legally executed, he handed it to me and I brought it home; I attended on subsequent days; the will was executed on the 27th of April; I am able to say that I saw him again on the 2nd of May; he died on the 10th May.

Cross-examined by Mr. Whiteside, Q.C.—I never saw Judith Corr since the morning she called on me for the will; I suggested the will, and wrote the body of the will in my own room; the house is not mine; I do not vote out of it; the dead man thought his brother was not a religious Catholic; I do not know the name of the confraternity to which Gilligan belongs; it was the deceased told me Gilligan belonged to a confraternity at Phibsborough; he is both a guardian and a witness; I got Mr. Donohoe to act as a witness; I cannot say how I learned the law, but I know that a father could appoint by will guardians over his children; I had no communication with any one about preparing the will; I prepared it myself; I did not show the will to any one before it was executed; I have no recollection of having done so; the first time I showed the will to my solicitor was when I heard the mother was sending the children to a Protestant orphanage; the first time I ever brought the will to Maguire was in the day time, about two o'clock in the day; I did speak to the wife, and she told me she meant to become a Catholic two years ago; I did not state that at the last trial, but it is not the less true; I will not swear whether I saw Mrs. Maguire or not on the day I first brought the will; I did not speak to her about the paper on the first, second, or third time I called on Maguire; the next time I saw the paper was late that night, or rather early on the morning

of the 27th, when I was sent for; there was no one present when I gave extreme unction to Maguire; I was not more than a minute or two in the room when I spoke to him about the will; there was no one present, neither did I exclude any one; I asked him to sign it, and he signed it without hesitation or difficulty; I then gave him extreme unction; I took away the paper and gave it next morning to the messenger, Judith Corr; I believe I got it again from Gilligan; before the will was executed Mrs. Maguire was called; she did not answer, and was not present at the execution of the will; at my request Maguire read the will aloud and distinctly; I took it away; I had seen the children in the house; I heard that Maguire and his wife were married in the Protestant Church; I had never known or heard of Maguire before I was sent for to attend him.

Did you know the first day that Mrs. Maguire was a Protestant? No one told me.

Did you know it?

Serjeant Armstrong—Mr. Whiteside says he is not asking anything as to the confession.

Mr. Whiteside, Q.C.—I do not say that. I put the question generally. Did you? I don't say whether I knew it in confession or not.

Baron Fitzgerald—What I understand is this, that Mr. Whiteside is not asking you as to anything that passed in confession.

Mr. Whiteside—Did you know it? I did not. I had no conversation with any one that evening.

Baron Fitzgerald—Before Maguire confessed that day, did you know his wife was a Protestant? I did not.

Mr. Whiteside—As you were leaving the house that day did you know his wife was a Protestant? That is the same question again.

Serjeant Armstrong—Put it the way I suggest.

Mr. Barry—Is not this only a circuitous mode of asking whether this gentleman heard it in confession? If that question is to be asked in an Irish court of justice at this time of day, your lordship will rule it.

Mr. Whiteside—My friend is in an English court of justice as well.

Serjeant Armstrong—Well, in any court of justice.

Mr. Whiteside—My learned friend put it to Mrs. Yelverton.

Serjeant Armstrong—I never did.

Mr. Whiteside—Well, some one did. I ask a simple and plain question. Did you know on the 24th of April, that Maguire's wife was a Protestant?

Baron Fitzgerald—I will put an end to this. I am not going to shrink from a ruling. Did you, on that occasion, know out of

confession, or from any other source, that the wife was a Protestant? I did not.

Mr. Whiteside—Then I must ask the question, and the gentleman may plead his privilege.

Baron Fitzgerald—Ask whatever question you think is for the benefit of your client.

Mr. Whiteside—Did you know before you did anything about the will that Mrs. Maguire was a Protestant? The answer I give you is this: I will not say whether I heard it in confession or not; if my life were to be saved by it I would not answer that question; I did not know it outside confession, and I do not say whether I heard it in confession or not.

Baron Fitzgerald—if, Mr. Whiteside, you do not intend to ask as to the confession, the fair way to put the question is as I put it.

Mr. Whiteside—I wish you clearly to understand, lest it should be supposed in any way that I compromise the law.

Baron Fitzgerald—Do not enter into any speculative question. Put any question you like. I don't want to shrink from my duty.

Mr. Whiteside—He says he will not tell what occurred in confession, even if his life was at stake. Yes, that is my answer; at the same time do not understand I heard it in confession; I knew next day that the woman was a Protestant.

Mr. Whiteside—Would you have given that man absolution if he did not promise to sign the will? I will answer the question fairly if you give me leave.

Mr. Whiteside—Answer, yes or no? I would not. Now, I will explain. I never heard his confession with the intention of forcing him or inducing him, directly or indirectly, to make a will; I never refused him any sacrament in order to induce him to make a will; I state distinctly and unequivocally that, directly and indirectly, I did not force him to make a will; he was always of the same mind with me, and he said that before I ever saw him it was his mind always to rear his children Catholics; it is false to say I ever refused or delayed him any sacrament to force or induce him to make a will.

Mr. Whiteside—When did you first suggest to him to make a will? It was before confession on the second day I saw him.

Cross-examination continued—I told him he ought to make a will, and that he could do so; I offered to become a guardian; my own reason for mentioning my name was because he was a very poor man; on the 25th I offered to be testamentary guardian, and draw up the will for him, and then I drew the will; I gave him the sacrament of penance on the 24th; it is the rule of the

Church to give extreme unction when there is a probability of a patient dying; after he signed the will I gave him the sacrament; I cannot answer whether I gave him absolution, as it is part of the seal of confession; I had finished giving him the rights of the Church before he signed the will; he made me no promise that he would make a will, nor did I ask him; I admit that I asked him to send his children to a Catholic school, and stated so at the last trial; about two years ago she offered to become a Roman Catholic; I asked her was it true, and she said it was true, that she said to her husband that she wished to become a Roman Catholic; when I applied to give the children, she refused; I can mention nothing that occurred in confession; I had no conversation with Maguire outside confession.

Reexamined by Mr. Barry, Q.C.—I never adopted any means to exclude the wife from the room when I had an interview with Maguire; frequent confession is recommended, and it does not follow that absolution might not be given after the first confession.

Patrick Gilligan sworn, and examined by Sergeant Armstrong—I was living in 7 Hendrick Street, and knew Michael Maguire, who lived there; I witnessed him execute this will produced; I saw Donohoe sign his name to it, and also Michael Maguire; Mrs. Maguire called me to see him; I went in to see him, and he then took this document from under his pillow and read it for me; he asked me would I become a witness to it; he asked me to go to a man named Scully to get him to witness it; Scully declined; I considered Maguire was perfectly right in his mind then; he shook hands with me, and then said he would die happily; I knew him for ten years, and I believe he was a Catholic; I called for Mrs. Maguire before the will was executed; she was then out.

Cross-examined by Mr. J. Walshe, Q.C.—I belonged to St. Peter's confraternity at that time, but I do not attend it now; I am a parishioner of the Rev. Mr. Keon, but he is not my clergyman; I read the will to Scully, who was an old friend of Maguire's; I had not arranged to meet Father Keon that morning; I met him by accident; I do not remember Father Keon telling Maguire to read out the will; after the will was executed, Father Keon brought it away.

To Sergeant Armstrong—We waited for Mrs. Maguire before the will was executed, but she was not in the house.

Michael Donohoe examined by Sergeant Armstrong—I am a grocer, residing in 14 Queen Street; I witnessed this will; the Rev. Mr. Keon asked me to witness the will, and I did so; I found Maguire lying on the bed very unwell; Father Keon took

up this paper and read it; I signed it, the dying man signed it, and Gilligan signed it; I recollect Gilligan going to the door and calling some Mrs. Maguire; I told Maguire I had come to witness his will, and he thanked me and shook hands with me.

Cross-examined by Mr. Whiteside—The first I heard of the matter was Father Keon asking me to witness the will, and I said I would; Maguire appeared to me to be very unwell, and was propped up in the bed with pillows; Maguire read out the will also; Gilligan called some one; he was answered, but no one came; he called for Mrs. Maguire; I never knew Maguire before.

Judith Corr sworn, and examined by Mr. J. B. Murphy—About three weeks before Mr. Maguire's death he told me to go to Father Keon, and acquaint him how he had passed the night; I went to Father Keon, and he gave me a note to bring up to Michael Maguire; I brought that paper to him.

Rosanna Foley, examined by Mr. Barry, Q.C.—I knew the late Michael Maguire, and was present at the baptism of his eldest child; the child was christened in St. Paul's Roman Catholic church, according to the rites of that Church; Mrs. Maguire was present when the child was christened.

Mary Thompson, examined by Mr. Murphy—I was present at the baptism of the second child of Michael Maguire in Arran Quay chapel; the child was baptized by a priest; the mother asked me to be godmother, and I agreed; she was present.

Margaret Walsh examined—I knew Michael Maguire and his wife; I was present when his last child was christened, in 1862; the child was christened by the priest in St. Paul's chapel; on one occasion she said to me that Maguire was not good to her, and I said he could not be good and send his children to a Protestant school; she said that could not be helped, because they were obligated so much to her father and mother for their support, and that he did not like to interfere, but that when he got employment he would not allow them to go to a Protestant school; I was intimate with Mrs. Maguire.

Cross-examined by Mr. Walshe—I did not tell this at Naas, but I would if I was let; I don't think it is right of any one to allow their children to go to a school of a creed they did not belong to; the day of the wake I heard the children were done for, as Father Keon got them, and I was glad to hear it.

Reexamined by Mr. Barry—I was glad to hear the children were provided for, as Mrs. Maguire had no father to provide for them.

Mary Dunne sworn, and examined by Mr. Murphy—I lived in the next room to Michael Maguire; I recollect the morning

Father Keon was there; I recollect seeing Mrs. Maguire in my own room that day; she came into the room; Mr. Gilligan came to the door and called Mrs. Maguire, and one of the women made answer and said she was not in the house, she had gone out; my mother asked her where she had been when she was called, and she said she was out; she then went into her husband and said to him, Well, Mike, have you anything to say to me? he said, No, but that if anything happens me, Father Keon is to do for the children; Mrs. Maguire said it was well to have the children done for, and asked would it make any matter that Scully was not there, and my mother said not, as Mr. Donohoe and Mr. Gilligan were there; she further asked would it make any difference her not having the will, and my mother said no; Maguire said to his wife, that the eldest child was getting too old to be going to a Protestant school; Mrs. Maguire told that conversation to her mother, Mrs. Lambert, and said not to mention to him that she told her, and Mrs. Lambert said, not I—the d—l a word; the children were sent to the Protestant school while Mr. Maguire was in England; during the time I knew Mr. Maguire he was a Roman Catholic.

Cross-examined by Mr. Whiteside, Q.C.—That conversation with Mrs. Lambert took place in Mrs. Lambert's room; the other conversation took place on the day the will was made; when Mrs. Maguire was called she was out; she said the children were settled for, as Father Keon was to get them, and that it was an ease to her mind; I was not examined at the last trial in Naas, but I was present; I never said anything to Mrs. Maguire about what I was going to prove; Father Keon sent for me before the trial at Naas.

Reexamined by Mr. Barry—I told Mr. Keon the same story I told to-day.

Anne Dunne, sworn and examined by Serjeant Armstrong—I am mother of the last witness; I recollect the time Michael Maguire died; I recollect when the will was drawn; Mrs. Maguire was absent at the time, but she was called for and she was out; after the will was drawn Mrs. Maguire came into my room, and said he said to her that Father Keon would provide for the children if anything happened him, and that he was easier in his mind. The witness corroborated the evidence of her daughter.

To Mr. Walshe—I don't care who gets the children, provided they are reared Catholics, and the wishes of the father carried out.

At this stage of the case, it being half-past five o'clock, the court-rose.

SATURDAY, NOVEMBER 28TH, 1863.

The hearing of the case was resumed at the sitting of the Court this morning, when the evidence of the plaintiff was proceeded with.

Patrick Maguire, younger brother of deceased, examined by Mr. Barry, Q.C.—My brother was a Roman Catholic, and I lived with him since his marriage, and I saw his children; I remember that his children were put to school before he went to England, three years ago, and when he lived with his father and mother-in-law in Hendrick Street; I saw the child going to the school; only one was sent to school; my brother remained in England between two and three years; she went after him, and returned again three months before him; one of the children, the eldest, remained here with her mother, Mrs. Lambert; after he returned home, I asked him was he going to allow his children to go to the Protestant school; he said, he was not going to do anything at present, but as soon as he got well from his bad state of health, he would take them away from it; he died four or five months after he had returned from England; he had returned five or six weeks when he became seriously ill; he retained the possession of his faculties all throughout his illness; I heard of the will being made four or five weeks before his death; she told me of the like [*i.e.* the will] being made, but no more than that.

Cross-examined by Mr. Walshe, Q.C.—My brother was very fond of me, and had a great respect for me; I saw him six or seven times during his illness; his wife, his father-in-law, and mother-in-law saw me there more than twice; I abide by that answer; I was not turned out of the room the last time I went to see him, because I was blind drunk, and because the sick man could not bear the smell of the spirits; on one occasion when I went, the second last day I saw him, I had been drinking a little; it was about eight o'clock in the evening; his wife and some of her family saw me there that night; I ceased to live with him about four years ago, and I left because I was going to get married, and because I wished to better myself, because I could not get anything when I was with him; I left because I quarrelled with his wife, and used sometimes to come there after drinking; I was often drunk when living there; it was when we two were walking together that we had the conversation about the children; we were walking of a Sunday; that was the only occasion I walked with him; he was complaining then, but was well enough to go out; it was nearly three months before he died, and about three or four months after he came home from England; I am a gilder; my brother was an iron-moulder.

Dr. Henry Curran, examined by Mr. Murphy.—I saw the late Michael Maguire; I attended him frequently in his last illness, and saw him shortly—ten days or a week—before he died; he was perfectly sane during the entire time I attended him; his case was a hopeless one; he had valvular disease of the heart, and hypertrophy of that organ. It is not usual for that disease to affect the faculties.

Cross-examined by Mr. Whiteside—Sudden excitement or alarm would be highly dangerous to a person suffering under such a disease; I saw his wife there frequently.

Mr. John P. Kavanagh, plaintiffs' attorney, examined by Sergeant Armstrong—I took down the case for trial at Naas, and before doing so I had taken the evidence—

Mr. Whiteside, Q.C.—This is not evidence.

His Lordship—I have already ruled that it is not right; it is illegal evidence.

Mr. Armstrong—The reason —

Mr. Whiteside—The attorney's reasons are not evidence.

His Lordship—I will take a note that Sergeant Armstrong tendered evidence to show the reason why certain witnesses examined at this trial were not examined at the former trial.

The plaintiffs here closed their case.

Mr. Whiteside then stated the case on behalf of the defendant. He said that the case had been appropriately closed with the doctor and the attorney. In his experience at the bar no such case had ever been tried, and in his opinion a jury had never been called on to perform a more important duty than they were now impanelled to discharge. From the way in which Sergeant Armstrong opened the case, they might imagine it was for some very small huckster's account, that it was merely a humdrum affair, and yet it concerned the future destination in life of three fellow creatures, as well as the happiness or misery of his client for life. It concerned parental duty, parental affection, and the tenderest and holiest feelings of our nature. A father might appoint by his will testamentary guardians for his children, but nowhere in the statute law had it been decided that an ecclesiastic could be such guardian. The act of 14 & 15 Charles II. had enacted that Roman Catholic ecclesiastics could not be testamentary guardians. By the 21st George III., chap. 62, sec. 5, no Roman Catholic ecclesiastics could be guardians. The 30th George III., chap. 29, s. 1, in express terms had excluded Roman Catholic ecclesiastics from being appointed guardians. The Emancipation Act, though it removed all disabilities of Roman Catholics, yet conferred no rights, and one of the reasons of the rule which excluded them from being such guardians was that

from their situation they could not educate young children or bring them up properly. There might have been other reasons, but it was not for them to interrogate the legislature, but to obey its provisions. Then, with reference to Gilligan, there was no law that made it possible for the same man to be testamentary guardian and a witness to the will which gave him that interest. It was from no reflection upon his sacred profession that the statute law prohibited a Roman Catholic ecclesiastic from being such a guardian, but on the common-sense doctrine that of all the absurdities that ever yet were presented to the human mind, that of a gentleman in the position of the plaintiff, demanding a child from the breast of its mother, was the most monstrous. It was as much against the law of nature as against the law of God, and the statute law was only in conformity with the law of both. If the jury sanctioned what was sought in this case, there was no absurdity too great to be fortified by the verdict of wise and honourable men. In reference to wills made by ecclesiastics, and conferring benefits upon themselves, what was the law of the most enlightened, powerful, and splendid empire in Europe—France—a great Catholic State, of which the Catholics were justly proud? By the express provision of their code, made by Roman Catholic gentlemen, the ablest and wisest in that land, and it was a marvellous production, that code, a priest was excluded from being a testamentary guardian. He (Mr. Whiteside) had the highest respect for the men who framed that law. And all that he claimed from the bench and the jury was, that the witness to the document prepared by himself should be subjected to the same tests as were applied by the French code. If one body of men in the state, no matter how respectable, were exempted from the responsibilities that rested upon all others, there would be neither liberty nor justice in the state that tolerated that exemption. Sergeant Armstrong had stated that the late Michael Maguire was a Roman Catholic—that he had been married about six years ago, and that he went to England, and during his absence the children were sent to a Protestant school, and remained there against the real wishes of the father. But the matter of fact was, that that was sanctioned by the father while he had his bodily strength and mental vigour unimpaired. The dead man had allowed his children to be there instructed, and he (Mr. Whiteside) should like to know what authority the court or jury had to interfere with the father who thought fit so to behave. Sergeant Armstrong had told them the children had been baptized in the Roman Catholic Church, but that baptism was recognized in his (Mr. Whiteside's) Church. His learned friend

had told them that Michael Maguire and his wife had been six years married, but that was a mistake. They had been eleven years married. His learned friend had stated that when the grandfather and grandmother got Maguire out of the country, it was they who sent these children to the school, and that when he returned he took them away and determined to place them under that incomparable guardian who has just left the box, who had been drunken and quarrelsome, and had outraged the feelings of the mother. His learned friend had next stated that there had never been a difference of opinion between Maguire and his wife as to the religion in which the children should be educated. That was strictly true. Mr. Maguire died in June last, and then they came to the Queen's Bench for that writ, which was invented by our forefathers for the preservation of our liberties—the writ of *habeas corpus*—for the purpose of penetrating into the county of Wicklow to try to discover in some gloomy glen those three children, whom the mother had there concealed for good reasons. The plaintiff demanded the writ to bring up the bodies of these three children, to tear them from their mother and transfer them to himself. The mother was called on by the court to answer why she should not give them up, and she answered:—"The three children are my children, and are all infants, and in my care and custody since their birth, except for a short period, and attend the day and Sunday school; and the cause of their being kept by me is for their nurture, and because, since their father's death, I am their natural guardian". A good answer was that, and it touched the heart to read it. Her answer further said that her husband had made no valid appointment of a guardian by will. On that answer the court refused the writ. The validity of that answer was sent to be tried. It was tried at Naas, in order to hasten the decision of the question. The jury differed on that question, why or wherefore he (Mr. Whiteside) knew not, and now they came before the present jury to ask them would they take these children from their surviving parent, and hand them over to the testamentary guardians. Now, what was the history of this family—this humble family—that was likely now to become so celebrated? Michael Maguire was born and educated a Roman Catholic. He appears to have been easy in the affairs of his religion, and quite content to marry a Protestant wife; and they were married in the parish church by the Protestant clergyman of the parish. He was there as well married in law as if he had been married by the Pope at one side and the Archbishop of Canterbury at the other. He was well and lawfully married in the parish church, and lived with his lawful wife for eleven years, without quarrel or dispute, before he

died. Women were more sincere in their religious belief, as in many other matters, than men. Very likely, if his wife was an agreeable young person, she insisted on his marrying her in the parish church, where they would be sure to be married, and so he might take her or leave her, and he, being a warm-hearted Irishman, took her. So this devoted Catholic was married, and well married, by the parish minister. And to do the thing in a stylish manner, it was by the garrison chaplain. Married by the garrison chaplain, it did not appear to have occurred, as it does in the higher walks of life—on the principle that a good thing cannot be done too often—that they were married over again in chapel. It was often read in the public papers, on the occasion of the marriage of a lady and a gentleman of opposite religions in the higher walks of life, that they got married first by a Protestant and then by a Catholic minister, so as to drive the nail in well, make it impossible to break the rivets of the Church (laughter). It was not likely that a woman who stipulated to be married in church would afterwards change her religion. She had had no more such intention than she had of becoming Queen of England. They had five children, of whom three were now alive. In all cases of marriages between men and women of opposite religions, it was the will of the most sincere that was carried into practice with regard to the education of the children; and in this case the father not only knew of his children being sent to that school, but he had been seen to dress them with his own hands, and send them there himself. He was but an indifferent practical Catholic, and one of the witnesses had deposed that during seven years she had never seen him at chapel. It was necessary to inquire into the facts of the will which had been contrived and concocted at the last period of that man's life. In every question on a will, two matters were to be inquired into—the *factum* of the will, that is, the matter of fact of the signature and attestation—and the contrivances or artifices by which it had been obtained. In all cases in which anything took place out of the usual routine, there was always something to attract suspicion and invite inquiry. That paper had the name "Michael Maguire" written on it twice. If Father Keon got these children, he would, no doubt, educate them in such a way as he should think fit; but the holy and sacred ties of maternal affection would not be trampled down without a struggle. The actors in obtaining that will were Father Keon, Gilligan, and Donohoe. But there was another—an absent witness, whose absence spoke trumpet-tongued in the case—Scully. Scully saw that paper, and heard it read; but Scully would not touch it with a pair of tongs. He told them if they wanted witnesses he would not be one. Scully was an honest

man, and an old friend of Maguire's, and therefore he was not produced. Judith Corr, the poorest person produced, had given the most honest testimony. He had a great respect for Judy. It was sought by the plaintiff to separate the mother from her own offspring. And this was Christianity—this was carrying out the true principles of Christian faith! Scully refused to be a witness to the will. They had then to procure some other witness. Gilligan, the member of some confraternity at Phibsborough, and Father Keon, went walking up and down in search of a witness, and they got Donohoe, a black stranger, to assent, and Donohoe goes to the dying man's house, and says to him—"I am come to be a witness to your will". How pleasant was that! Quite in the ordinary course of business. And when the three were about signing the will, Gilligan goes to the door of the room, and with a loud voice cries out from the top of the stairs: "Jane Maguire, come and appear". (Laughter). "Come up and take the last look at your children. You will see them to-day, but when the breath is out of the body of your husband, you may never see them more". Did the jury believe a word of that—that there was any real intention to summon the woman to be a witness to the will? It was a vile and disgraceful falsehood. Was there any intention of bringing the woman up, and did they dare to think they would get from a jury, whose bounden duty it was to uphold liberty, upon that trumpery pretence, a verdict that would separate the children from the mother? He branded it as a stupid and contemptible device. They felt they were guilty men; that they were doing a thing that would not bear the light, and that would be inquired into, and should be inquired into as long as there was liberty or justice in the country. They believed that would be done if the transaction had been executed by all the priests that ever sat in the Council of Trent, or all the parsons in the Church of England. No; it was only a device for the purpose of inducing the jury to believe that they even gave that chance to the woman who was thus about to be spoliated of her offspring. Donohoe, who told them all that occurred, did not say that after the will was made the deceased said he would rest happy. Gilligan, on the other hand, told them that he made that declaration, thus contradicting the other. It was by such discrepancies that they learned the value to be ascribed to human testimony. Judith Corr flatly contradicted the statement of the Rev. Mr. Keon, that he had given her a message about sending back the will. He set no value on the testimony of Maguire, who was not examined at the trial at Naas. When a witness was produced at a second trial, not to prove the finding of a document or an im-

portant record, but to swear to conversation with a dead man, they should be on their guard against that kind of evidence. Dead men tell no tales. He deposed as to a conversation with the widow, in which she told him of the will. Why was not he produced at Naas? That could not have been forgotten. He called on them to disbelieve evidence of alleged conversations, in which the widow was said to have made statements which contradicted the evidence of her heart. Was there a gentleman on the jury who would hesitate to believe that when they brought this witness down to Naas they had not got good reasons for not examining him? He impeached that evidence, and called on the jury not to believe it. He would produce the defendant, who would flatly contradict that evidence. These were lying words invented for the trial; but they were before a tribunal that had the power to discriminate between truth and falsehood, and there was a happy instinct in the hearts of jurymen that taught them to ask those parties, "If your story be true, why did you not tell it before, and not now, when your evidence is wanted to give support to a failing cause?" He came now to the great character in the case—the drawer of the will. By our law the person who drew a will, giving himself a benefit, was at the outset looked at with suspicion. If a man drew a will leaving himself £10,000, he went before a jury with a burden of proofs cast on him, to prove to demonstration the *bona fides* of the transaction. His act was looked on with suspicion. His learned friend told them that in the execution of a will there was very little capacity required. In a testamentary document the party should be himself the party thinking, deliberating, examining; in one word, he was to will. That was laid down by a high authority. The will was to be the emanation of a man's own mind; he was not to be influenced by the terrors of this world or the terrors of the next. It was to proceed from his own unclouded intellect. At the moment this world was passing from before him, and when the man who was supposed to have the power of giving him the pardon from the next world, refuses to do so unless he signs the will, was not that undue influence? When he was asked by him (counsel) "Would you have given him absolution if he had not agreed to make a will appointing testamentary guardians who would bring up these children Roman Catholics?" he answered fairly and candidly that he would not. He firmly believed the Rev. Mr. Keon, that he was sincere, and acted conscientiously, and that he felt that to be his duty. Although he repudiated the power to give or withhold pardon, still Mr. Keon was entitled to the just consideration to be given to a man who was sincere. He

would admit that Michael Maguire was sincere, and at that moment he thought, no matter what might be the errors or shortcomings, or carelessness of his past life in reference to the performance of his religious duties, that, as Father Keon stood beside him, it was in his power either to grant or withhold that which was to seal his doom for all eternity. Talk to him of undue influence, or money, or prejudices, or any little miserable, petty, temporal concern! Give him that influence that could speak for all eternity—that influence that seemed to usurp the conscience of the Almighty, and pronounce the eternal, irreversible doom that was to belong to the immortal spirit in the world to come! That power was said to belong to the Rev. Mr. Keon; that power was believed to be in him by Michael Maguire. Let them picture to themselves the man stretched on the bed of death, his intellect failing, his power sinking, the lamp of life flickering in the socket—then let them place beside him the educated, able, well-trained, intellectual priest, who, having discovered that he had three children of a Protestant wife, held it to be his duty to extort a will appointing three testamentary guardians to take away the three children from their mother. It was that unnatural, unchristian will that he asked them to condemn, because it was against the laws of nature and of God. The question put before them was, whether or not the Rev. Mr. Keon would have given the rites of the Church unless the man had at first consented to sign the paper. The Rev. Mr. Keon suggested the will; he drew it; he drew it alone in his own residence without asking the man a question. Whose will was that? He appointed the brother guardian, although when he left the dying man the latter said he did not wish his brother to be guardian, and the priest never, after doing so, asked him the question whether he had changed his mind. Who was the great actor in the case? Father Keon. Suppose the will was one written by Father Keon for a rich Roman Catholic merchant in the city, and there were many, a man having three children and £30,000, and that it ran in these words—"I give to you, Father Keon, all the money I have in the world, and give you my children with it", and that he signed it before the administration of Extreme Unction, was that will going to stand? Why, there would be no property nor law in the land if that were to be the case. One of the ablest and most accomplished physicians of modern times in this city, whose writings they read with interest and profit, once told him, "If I wanted to practise upon a poor human being, I would give you all his prior life, if you would give me the last week of it". It was the last week of a man's life that they were to regard; when his bodily powers were

failing and his mental powers were sinking; when the hope of life had departed, and the fear of the life to come had begun. At that period they were not so much to watch his conduct, but that of people who obtained from him wills or papers. This will did not dispose of money, but it disposed of jewels above all price to his client—her children. It disposed of them for ever; it was, therefore, of more value, as concerned her, than £50,000. Did they believe that if they put the three children into one scale, and loaded the other with the precious contents of the mines of Peru, that the natural feelings of the human heart would not, even in poverty and affliction, take the children of her bosom, rather than all the wealth the world could give? Therefore, this will disposed of that which was more valuable than money. Let them make the case their own. Let each one of them imagine that he was stretched on a bed of death, his wife conveniently out of the way, a respectable ecclesiastic in the room, and the will signed under the belief, that if it were not, he would not give him absolution. Let him imagine his children gone for ever from the wife he loved. Let them make that case their own—realize it—place it clearly, strongly, vividly before them, because this was no trifling case. Every one would look to and consider their verdict, because it was more frequently by the unshaken integrity of British jurors than by the force of arms that law and property were preserved.

Having commented on the evidence at length, Mr. Whiteside, in conclusion, said: Gentlemen, Michael Maguire had never consulted this priest before. The first person who advised him to send for a priest was his wife, and I respect her for it. That shows that she knew how, while she asserted her own religious opinions, to respect those of others. The priest was sent for, and on the 24th he was occupied in hearing the confession of the deceased. I said nothing here about what passed between these people. He was not sent for to make a will, but he did; and when he comes into court to prove it, it lies on him to prove it by evidence above suspicion. Nobody asked him anything about the confession—that is the right of his Church; but when he obtains a will while so engaged, he is open to the same examination as I would be exposed to if I drew a will. You will see the difficulty in which we are placed. The priest can tell and can withhold anything he likes. The oath he takes is to tell the truth, the whole truth, and nothing but the truth, so help him God. Well, there must be an exception in his own mind with reference to confession. The principle has been laid down by Taylor, that a priest is not bound to answer questions which would disclose anything confided to him by an unfortunate criminal. But

the moment that any clergyman sits down and draws a will, willing the property or the children of a man to himself, he puts himself in the position of any other person. You see the difficulty in which I am placed. The priest says he will not tell anything told him in confession. He is the party who puts the limit to the confession, and who decides how much he shall answer and how much he shall not. I say that on the 25th he came determined not to give the man the rites of the Church unless he agreed to sign the paper. He learned that the man had three children, and he at once suggested that he should make a will. That shows the immense power of mind over mind. He then offered himself to be a testamentary guardian. I contend that extreme unction was never administered until the will was signed. I say that the man signed the paper under the influence of terror, under the fear of not obtaining absolution, and if that be not undue influence, it would be better the term should be blotted from the statute books. On the next visit of the priest, the first question he asked was, "Have you signed it?" "No", was the answer. "Then sign it now". Why did he get it signed then, when no one was there, when the wife was excluded, and all witnesses absent? Why have it signed then? *Cui bono* have it signed? Because he would never have given absolution until it was signed. I rely on that first signature, which establishes that before he gave the last rites of the Church Father Keon extorted from the deceased the promise to bring up the children of this Protestant mother in the Roman Catholic faith, as conclusive evidence of undue influence. The will is carried off by the Rev. Mr. Keon when it was signed. I do not hold that if the children were brought up in a Roman Catholic school they would be destroyed, but I am combating the argument that they are to be taken away from the mother because they were sent to a particular school. Do you believe she concurred in the will? Do you believe she was on the stairs when Gilligan went through the shameful mockery of calling her? No such case was ever tried before. A man who had nothing to leave his wife but the memory of his love and affection; he loved her when dying; he loved her in the hour of death as he had loved her through life. He dies, leaving three out of five children surviving. The wife is sought to be robbed by the Habeas Corpus Act of these children, who are to be sent away for ever from her sight, to gratify what? For the triumph of the ecclesiastical spirit of the relentless priest. He seeks to carry out what he believes to be the great and dominant principle of his Church, and, I suppose, believing that if they were not taken from her their eternal happiness is in jeopardy. God forbid I

should believe that. Thank God we are not to be judged by our fellow-man. We are to be judged by a higher and greater power. The actions of men, their conduct in life, their faith and works will all be judged by that power that cannot err and cannot be deceived. And it will not be the fictions or inventions of any set of men that can interfere with our eternal happiness or our eternal misery. This poor man at that hour was, I believe, a true Catholic. I admit the priest was sincere. He made the will by the influence of religious persuasion, by fear operating on the mind of the dying man. He did it darkly, and the question I ask is, whether a jury of gentlemen, I care not of what religious persuasion, will deliberately put their hands to a paper that is to seal and sign for ever the fate of these children, and rob the mother of her happiness in life. I confide this case to your hands. I call on you for a verdict when you hear my evidence. I shall not trouble you by saying what contradictions will be given. I ask a verdict, not from your compassion, but from your justice, from your respect for the law, from your desire to uphold parental authority, from the wish that the tribunals of justice shall be powerful against all classes and all creeds, and that we shall continue to be governed as it was always intended we should be governed—by a law of liberty, of justice, and of reason. (Applause).

The following evidence was then given:—

Mrs. Jane Maguire, defendant, examined by Mr. J. E. Walshe, Q.C.—I am the widow of the late Michael Maguire, and was married in St. James's parish church in 1853, by the Rev. Mr. Hort, a Protestant clergyman. I never was subsequently married by any other ceremony. My late husband was an iron moulder by trade. We had four children before he went to England, two of whom are dead and two are living. The eldest girl was two years and three months old, and the youngest a month old, when he left Dublin to go to England. I cannot fix the date accurately. My first child, now living, was baptized, when two or three months old, in St. Paul's Roman Catholic chapel. I went on all occasions. My husband never came to see them baptized. The present eldest was my third child. The two eldest died. My second child was baptized before my husband went to England, and I brought her to chapel. I continued to reside with my father and mother when he went to England. My father, mother, and I are all Protestants. I followed him after four months, when he got employment. I left the eldest girl behind me when I went to England, and my husband was well aware and expressed his approval of my having done so. I brought the second child with me. The second is now four

years old. I had another child while in England, and it is one of the three now living. I remained in England with my husband two years, and he knew that the child I had left behind me was with my father and mother. I came home four or five months before he returned, and when I came back I went to my father and mother. He sent me one letter during those months with a money-order for twenty-six shillings. He was not in bad health, but had a bad cough when he came home. He had lost his work in Bradford, and that was the reason he came home. He came to my father's place, and we all lived in Hendrick Street, and occupied two rooms in the house. Only my father and mother and we lived there. He took ill about four months before he died. I often heard of the symptoms and the complaint, but till about three weeks before his death he did not take very bad. He had not seen a priest during the early part of his illness. I was perfectly aware of my child going to school before I came home, for my father used to write, and say that she was growing a fine child at the letters, and going to school every day. I read the letters to him, and he never made any objection to it. The two eldest were going to school at St. Michan's Protestant parochial school when we came back. The eldest went constantly to that Sunday school, but not the younger. My husband was perfectly well aware of their going. He would often say to my mother to make haste and let her go to the Sunday school, and he used to clean her boots and put them on her himself, and dress her himself, but only on Sundays he used to do that; my child got a premium, a Bible, for regular attendance at the Sunday school, and he said not to let her have it until she was able to read it, as she might tear it; during the whole eleven years we were married, I do not think he went a dozen times to chapel; during his illness I constantly told him to get a priest, that it could not kill him; he said it was all a humbug, that I wanted a priest worse myself than he did; he did ultimately consent to have a priest; I sent for the priest, and Father Keon came between nine and ten in the evening, and my husband was always left alone with him; Father Keon said nothing, good or bad, on the first visit; he came on the 25th, and was left alone with him; I never interfered at all; on Saturday morning I was preparing the children to go to school, and he called me to his bed-side—this was after Father Keon's second visit—and told me "not to send Ciss and Sarah to school to-day", and I, after a while—for he was hasty tempered—asked him, "Michael, why are the children to be prevented from going to school to-day?" and he said that the priest would not finish with him, or give him absolution, until the children were stopped from going to a Protestant school; I went one

night for Father Keon, when I thought he was dying, and Father Keon was, as always, left alone with my husband; I went out on the Monday to the church on business for my father, to where my father does business as sexton, at the garrison church; I was out an hour; when I came home he was just as usual; I did not see two people of the name of Dunne [witnesses] when I came home that day; my husband never told me he had made a will, nor even mentioned anything about it; Mrs. Dunne's statement is entirely false as to her saying to me that she would leave me alone with my husband; I never was aware that day that my husband had made a will, and Father Keon never, that day or any other day after, told me that my husband had made a will depriving me of the children; the children were stopped going to school in consequence of the priest; he one day was sitting at the fire with me, a week before he died, and I asked him had he anything to say to me, and he said no, nothing; I was well aware, for Dr. Curran told me, that he would never over it, and he knew it, but would not give in to it; he never told me of the will or anything about it; my husband's brother only came twice or three times, and my husband said if he (the brother) were as sick as he was, he would call to see him, and said that in the hearing of another party; one of the times Pat Maguire came he was drunk, and my husband told him to sit down, as his breath was overcoming him; we lived happily, with occasional little differences, but were, as far as religious matters were concerned, perfectly reconciled always; I had never intended to become a Roman Catholic; I never told Pat Maguire that I knew about the will; it was too closely concealed to tell anything about it; I never remember Mrs. Walshe saying that Mike complained that the children were sent to a Protestant school; I am sure that I never said that we would alter that; my husband knew that he was too comfortable to ask to change the children; my mother never said, "Devil a bit", when the remark was alleged to have been made as to taking the children from school; no such conversation ever occurred with any one; about a fortnight after my husband's death the first application was made to me for the children. (Counsel read letter of plaintiffs' attorney, dated 4th June, 1863.) I refused to give them up; they are in Newcastle, county Wicklow; I weaned the youngest three weeks after my husband's death, and was actually nursing her when I received that letter.

Cross-examined by Sergeant Armstrong—They are all together in the same house in Newcastle; I don't pay for them; they did not all go there at the same time; the eldest two went about two months ago, and the youngest I brought myself about a week ago; they are supported by the funds of a charitable institution;

I reside with my father and mother in Hendrick Street; we had two rooms there on the same level; my husband paid the rent of his own room before he went to England, when compelled by bad times or bad trade; he was four months away when I joined him; we had no difference before he went; no coolness of any kind led to his going there; I took the two children that died to be baptized also; I brought home the two youngest with me; my father is not a tradesman, and he lives on what salary he obtains as sexton; my mother has no trade; we all slept in the one room, and he came home and died without any property or anything; he came back on Sunday, and started to work on Tuesday, and continued to work for four or five months; he used to earn thirty-two shillings per week; my husband never paid a shilling towards the rent of the room; that was an advantage; nor did he contribute to the support of the table; I had my own money; both together helped to support, and we had all to be clothed out of the thirty-two shillings per week, and to have pocket money too; I was not so well dressed as I am now; my husband had eight shillings per week from a trade society—to which he had subscribed—during his illness, and he was buried at Glasnevin Cemetery at the expense of that society, and according to the rites of the Roman Catholic Church; he was rather hasty in his temper, but it did not happen every day that there would be a blow-up with him if he got a hasty reply; these differences never were caused by religion, for he was never much given to religion; I used to attend church; I went on Easter Sunday morning to St. Paul's church, and he was at home then; my father had then to provide for the five in family; my husband, when he ceased to work, had no means to go elsewhere; it was my father's and mother's, and his wish too, that the children should go to St. Michan's school; he never expressed a wish to the contrary; I did not know that he was coming home when he came, but I heard from a woman about a fortnight before he came, who had met him in Liverpool, that he was coming; I cannot say that I heard he was coming before I got the third child baptized; I forget whether I was in the room when the priest came that night; I remained on the lobby until he retired that night; my father and mother, and the three children, left the room, and another young woman, a Mrs. Kelly, also; Mr. Keon came next day; I don't recollect whether I was in the house or saw him on the Saturday; I won't swear I was not in the room when he came that day; he came on the Sunday, and I saw him; my mother and I, and two neighbours, friends of Maguire's, were in the room when Mr. Keon came that day; no one ever read to him but myself; their names were Carolan and Lynch; they did not

read to him; my husband continued in his senses down to his death; I had no conversation with Dunne on the 27th about the will or my husband's affairs, for I knew nothing at all about the will; I met Gilligan, and asked him where he was going, and he said for Scully, and I asked him for what, and he said he did not know; I never mentioned that till now; I gave my evidence to my attorney, but never told him that; when Gilligan was going back the second time, and he said Scully would not come, my husband sent me down to the hall-door for Gilligan, and I went down; I was on perfectly friendly terms with my husband that morning; I did not ask him why he sent for Gilligan or Scully, for he would not tell me, as he did not place much confidence in me, or give me his real mind on matters; I did not see Gilligan, Keon, or Donohoe together there that day, but my mother told me they were there; there was a pen and ink in the room; she told me that she had left the room when they were there, but did not tell me she thought they were doing some matter of business; she told me that Gilligan had brought up Donohoe, and that the priest went up with them, and that I was called, and I said, "What did they want with me?" she said she did not know; it never struck me to inquire what they were doing with him; I did not ask; Gilligan and Donohoe were strangers; I knew that Scully had refused to come; I was back and forward after I came back from the church, and conversed with various people; I wondered very much what they were doing with him, but no one would tell what they were doing, even if I did ask; I never heard that Keon had taken anything with him; I am not allowed anything by the charitable institution myself, but live with my father and mother.

Brigid Kelly sworn, and examined by Mr. Byrne—I remember going for the priest; I remember the several visits of the priest; I was there at those visits; I heard Mrs. Maguire asking her husband whether he had anything to say before he would get more ill; he said he had nothing to say; I had often seen the children going to school, and had heard him telling the eldest child to get up and go to school, it was long after his death that I heard of the will.

Cross-examined by Sergeant Armstrong—I was constantly in the house, day and night, before his death, during the last week of his life; I lodged in the house; I had not a child there; my child is at a Catholic school in Bray; the child's name is Mary Anne Kelly, and she is about eleven years old; my husband is dead six or seven years; I am a Catholic; I have seen priests attending sick persons, and it is the invariable usage to leave the priest alone with the sick person; I do needlework, and

I was not there on the morning when Father Keon and Gilligan were there; I did not, when I came back, hear that they were there; I did not see Mrs. Maguire's mother that day; I saw them next morning, and they did not tell me that Father Keon, and Gilligan, and Donohoe had been there; I was acquainted with a young man named Branagan since my husband's death; there was nothing particular between us.

Had you a child by him? I don't think there is any necessity to answer the question.

Mrs. Lambert, defendant's mother, examined by Mr. Whiteside, Q.C.—We are a Protestant family; the children now used to go to the Protestant school with my son-in-law's full consent; he could have prevented the children going to the school if he liked; no one could gainsay him if he liked; I sent the child to school as soon as I could to keep her off the streets; I wrote word to the father that I sent the child to school, and told him that I wrote to her.

This witness contradicted Mary Dunne as to the conversation between Mr. Maguire and witness.

Cross-examined by Mr. Barry, Q.C.—I might use the word "devil"; I sometimes say it; I thought it strange that Mr. Keon, Gilligan, and Donohoe, who was a stranger, should be in the room with my son-in-law, but did not ask any question about it.

Mr. Barry—Did you know Gilligan?

Witness—He was one of Maguire's drunken companions.

Mr. Barry—Will you swear you ever saw Gilligan drunk.

Witness—I do not say I did; they used drink together.

Mr. Barry—Will you now venture to swear he was a drunken companion of your son-in-law?

Witness—I will not; I meant they took a sup together.

Mr. Charles Lambert, defendant's father, examined by Mr. Walshe, Q.C.—The first time Father Keon came I was lying in bed sick; I was ordered to get up; I did so, and I got a cold from it too (laughter); I am away from every Monday morning; I never heard of the will till long after the man's death; never heard of it at all till then.

Cross-examined by Mr. Murphy—I never heard of Donohoe being there or Gilligan; I did not know of such people at all.

The court was here adjourned to half-past ten o'clock on (Monday) morning.

MONDAY, NOVEMBER 30TH, 1863.

His Lordship sat at half-past ten o'clock, and the Jury having been called over,

Mr. Sergeant Armstrong applied for leave to recall the plaintiff, Patrick Gilligan, who was examined in the progress of the cause, with the object of contradicting Mrs. Maguire's statement as to a certain conversation with him, relative to the deceased sending for Scully, the barber.

Mr. Walshe, Q.C.—There is the strongest possible objection to Gilligan being examined at this stage of the proceedings.

His Lordship—It ought to have been stated to me on Saturday evening. I cannot shut it out, but it ought to have been mentioned on Saturday evening.

Sergeant Armstrong said it was so late on Saturday that it was impossible to enter upon it then.

Gilligan, on being recalled, was examined as follows:—

Sergeant Armstrong—On the morning of the 27th April, when you were going for Scully, as you were leaving Maguire's room, did you see Mrs. Maguire?—I did. She asked me what Mike wanted with me. I said that he had a particular wish to see Scully.

Sergeant Armstrong—Did she say "For what?" and did you answer "I don't know"?—I cannot recollect anything, but that he had a particular wish to see Scully.

Not cross-examined.

Mr. John E. Walshe, Q.C., then proceeded to sum up on the part of the defendant, and said the two points defendant relied on as invalidating the will were—first, that it had been obtained by undue influence, in this, that it had been got from a man on his deathbed by a clergyman, who produced upon that man's mind the impression that, if he did not make it, the rites of the Church would be refused to him; and, secondly, that the law cast suspicion upon a will prepared by a person who derived under the will any substantial or material interest—above all, if it was obtained by a person, as in the present case, who derived under the will the whole of the interest which the will conferred. The entire course of the married life of Maguire and his wife indicated that he was careless of the ceremonies of his religion; and as for the fact that the children were baptized in the Catholic chapel, that was recognized in the Protestant Church, and it was natural to suppose that in matters of doctrine common to both, the wife would adopt the form belonging to the religion of her husband. Besides this, this baptism was procured by the mother alone, without any order or direction of her husband. The

husband himself had showed continual anxiety that the children should be regular in their attendance at the Sunday school. Though the first child was sent to school by the grandfather when the father was in England, word was written to him, and he expressed approval of it, and when he came home he became active to insure their attendance. The allegation that the children were sent to a Protestant school because the Maguires were dependant on the Protestant grandfather was met by the fact, that Maguire was earning thirty-two shillings a week during his health, and that when he got ill he received eight shillings a week from a friendly society to which he belonged. The plaintiffs' witness, Mary Walsh, had deposed, that when she heard these children were sent to a Protestant school, her comment was, that Maguire could not be a good man for allowing them to go there. He (Mr. Walsh) would not censure any one for strong religious feelings, but he would say that a person in her rank of life, who indulged in the expression of such intolerant ideas, was the last witness that ought to be believed when intolerant opinions were in question. And was it to be believed that on that one occasion in her whole life Mrs. Maguire would have made that woman her confidant, by speaking to her of a conversation between herself and her husband, with respect to the religion of the children? The Rev. Mr. Keon had deposed that the dying man had stated to him that the children were sent to the Protestant school in deference to the Lamberts. He (Mr. Walshe) did not mean to deny that. But, was it not obvious that the man on his deathbed, pressed with the impropriety of the act, would make some excuse, and that the most natural excuse he could make was that which he gave to the clergyman. Patrick Maguire's story of the deceased telling him during a sunday walk—when, or where, nobody knew—of his intention to change his course of conduct with regard to his children, was preposterous. If such had been his deliberate intention, it must have been known to many. But, who could Maguire have found more worthy of being entrusted with the care of his children than his wife? No one could mark out one single act or expression of hers which ought to have forfeited her husband's confidence. It was clear that if the priest had not been brought to the bedside of the dying man, no such will would have crossed his mind. When his wife for the first time suggested it, he positively resisted it. The Rev. Mr. Keon, in his evidence, had stated that he would not have given absolution or the last rites of the church to the dying man unless he consented to make the regulation that the children should be brought up Catholics. And look at the startling request which the dying man was required

to accede to without a murmur—that a perfect stranger to him should be named as guardian of his children, in connection with others who would be mere cyphers in his hand! A most important fact in the case was, that the will, when drawn by Father Keon, had been left with the sick man for an entire day to get it executed. But during the entire day he took not one single step to execute it; and it was not till at midnight, when he thought himself near death, and the priest had been called in to attend him, that he signed it. The Rev. Mr. Keon's evidence was that he asked him had he got the will executed, and that he said not, and that he then asked him to put his name to the will, which the dying man did, after which the priest heard his confession and administered to him the rites of the Church. Possibly his lordship would tell the jury that a will obtained under these circumstances, *per se*, was in point of law unduly obtained; but if the question was left to themselves, could they hesitate about it for one moment? He (Mr. Walshe) was not reasoning this case upon anything peculiar to Catholic or Protestant in point of creed. If he was dealing in this case with a Protestant clergyman, he would feel his tongue a little more unbridled, and he knew what a Protestant jury would say of a will so prepared by a Protestant clergyman; and there was this in the matter, that the man who thought it right that the children should be taken from their mother was a man who was not to be turned aside from his purpose by any of those considerations which might in general influence frail humanity. He was a man who had never felt the emotions of a husband or a father, and the most unlikely to bring before the dying man what the claims of a wife and children were. The learned gentleman then proceeded forcibly to review and comment on the evidence adduced a both sides.

Mr. Barry, Q.C., then rose to reply on behalf of the plaintiffs.

Baron Fitzgerald, addressing Mr. Barry, then said that before he addressed the jury he wished to observe that upon the whole view of the case, having regard to the position in which the Rev. Mr. Keon stood, and having regard to the fact that the disposition in question did not originate with the testator, but was suggested by Mr. Keon, who took upon himself the preparation of the will, and that, having acted in the execution of it, he was of opinion that it would be necessary for him (Mr. Barry) to satisfy the jury that Maguire fully understood the disposition suggested, and that, understanding it, he adopted and sanctioned the instrument which embodied it. Another thing which pressed his (Baron Fitzgerald's) mind was this, with respect to the provisions which should be made for the education of the children in the

Roman Catholic faith, by appointing testamentary guardians. The only explanation of the nature of the law with respect to this kind of a disposition was by the Rev. Mr. Keon. He said he explained the will, but that he did not suggest anything whatever with reference to the effect of the appointment of these testamentary guardians. He (the learned Baron) apprehended that the law on that matter was unquestionably this: that if the testator had inserted in the will a direction that the children should be brought up in the Roman Catholic faith, and had nominated the wife as sole guardian, the law would enforce that direction and compel the wife to bring up her children as directed by their father. It would, he thought, be a matter to which the learned counsel should address himself, whether the testator knew that by his appointment of testamentary guardians he would exclude the wife from all control over them.

Mr. Barry thanked his Lordship, and said he would, in the course of his address, apply himself to that view of the case. He said: Gentlemen of the Jury, it now becomes my duty to address some observations to you on this remarkable case. I ask you to believe that I speak with the deepest sincerity, and in no spirit of affected humility, when I express a wish that the duty had devolved on some one more competent to discharge it effectively than I am. I do not possess—few indeed do—the oratorical powers of the great advocate who addressed you on Saturday. I possess not the abilities of his learned colleague; and, perhaps, I might say that I am not equal to either of them in the zeal proper for a case of this kind, for I have been trained in that expansive and generous liberality which, I believe, is the characteristic of an Irish Roman Catholic. My powers are feeble, but I hope by the aid of a just cause, and guided by the light of truth, to dispel the mist of error and misrepresentation cast around the case by the declamatory enunciation of unfounded assertions and hackneyed calumnies against the religion and priesthood of the Catholic people of this country. Mr. Whiteside referred to the statute law, the provisions of which my clients come into this court to enforce, and the privileges of which they seek to exercise. I do not think it necessary to enumerate at length or discuss in detail the provisions of the numerous statutes to which Mr. Whiteside referred, and which were displayed before you in ponderous volumes. The law, in regard of the present inquiry, stands thus: In the reign of Charles the Second the legislature conferred on the Protestants of this country the privilege of doing that which was dear to every father, to provide for the tutelage and religious education of his children after his death. The intolerant spirit of those days ex-

cluded Roman Catholics from that privilege. So far from extending that or any other privilege, act after act, one more penal than another, was passed, until Catholics were deprived almost of the right to live, until it would have been miraculous, save for the special intervention of that God to whom they prayed in the hovel and the mountain cave, that they were enabled to maintain the religion of their fathers. At length a tardy piece of justice was done, and by the statute to which you have been referred, the 21st and 22nd George III., chap. 62, it was enacted that any person being a Protestant might dispose of the custody and tuition of his children to any person other than a person professing the "Popish religion"—such was the delicate language of the legislature—and any person professing the "Popish religion", who had not lapsed from the Protestant religion, might dispose of the custody of his child to any other person than to an ecclesiastic of the Church of Rome. This latter exception against priests is (we contend) removed by a subsequent statute. Observe how carefully the act provided that no accident should expose the Protestant child to the danger of having his faith tampered with. The Protestant was carefully guarded from the snares of the proselytiser. The guardian of the Protestant child should not be a Catholic. The Catholic who was converted from Protestantism was excluded from the benefit of the statute. That was the statute, niggard in its provisions, insulting in its language, but such as it was, that was the statute which was sought to be nullified and set at nought against the dead Catholic father by the counsel for the proselytiser. In the fine speech which was heard from Mr. Whitehead on Saturday—a speech which I listened to with unqualified admiration, but not unmixed with regret that talents so splendid should be abused to purposes of intolerance and injustice—he stated as the text of his discourse, and repeated and enforced with the splendid power of his declamation, the assertion that this was a case in which an attempt was made "to drag the children from the despairing mother". I arraign that assertion as false, and false to the knowledge of those who put that statement in the brief. To this moment she might have retained the children in her possession, enjoying all the blessings of a mother's care, for no human being ever suggested the separation, until she herself, in defiance of the wishes of her dead husband, regardless of her duty as a wife, parted with her offspring, surrendered them to the Protestant institution which now detains them, while she betook herself to the congenial conversation of Brigid Kelly, who thought it "nothing particular" to be the mother of a child of shame. It is false that this is a litigation between a "relentless priest" and a mother claiming the privi-

leges of a mother. The issue is between the persons seeking to carry out the lawful wishes and behests of the dying father, and the controllers of this institution, to whom the children were handed over in violation of these wishes, and who detain them in defiance of all law, for the purpose of weaning them from the faith in which they were baptized, to rear them in a faith which their father believed to be erroneous, and for what end? That the next census might exhibit an increase of three in the Protestant population of Ireland. I speak in no spirit of disrepect of such institutions. I honour and respect them, so long as they confine themselves to the divine and sacred work of charity. I honour and respect them for that, and my purse would be open to a Protestant institution, so long as it confined itself to its legitimate sphere, as to a Catholic charity. But when they transgress that proper sphere—when they make ~~charity~~ a cloak for proselytism—when they seek to tamper with the religion of the Roman Catholic child whom they affect to relieve—I tell their founders, no matter how well intentioned, that they are mischievous institutions, the source of public scandal, of sectarian bitterness, and social animosity; and they are as futile and unavailing as they are mischievous; for through centuries of persecution, the most gloomy and atrocious—through periods of revolution, dynastic and political—through fire and sword—through pestilence and famine, the people of Ireland have remained true to their religion and their God, and they will not be shaken from that allegiance, though there were 10,000 "Birds' Nests", supported by all the wealth of England, and animated by all the fanaticism of Exeter Hall (here there was a loud burst of applause in court, which was instantly checked). Mr. Whiteside referred to the French law, and said that by the French law a confessor who, by his spiritual influence, obtained for himself a benefit under a will, would be open to censure. What had that to say to the case? Did Mr. Whiteside state if, in France, a dying father appointed a guardian for the tutelage and religious education of his children, and that after the father's death a hostile sect took possession of the children in defiance of the dead father's wishes—did Mr. Whiteside say what then would be the consequences in France? I believe the gang of conspirators would find themselves arraigned before a criminal tribunal. Let not my learned friend refer to foreign countries. In every country where Christianity was known, where the obligations of religion and morality were observed, it was the right of the Christian, and a solemn duty enforced by every religious creed, to provide for the education of his children in the faith which he believed to be true. It was his duty to protect them from error,

and direct their footsteps in the paths of virtue and truth. In no country in the world but in this, would a minister of God, who enforced on his penitent the performance of that sacred duty, be denounced as a relentless knave, or the dying man who listened to his exhortation be designated as a superstitious dupe. Mr. Whiteside having disposed of the French, favoured us with some English law. It struck him that there was something in the case so novel and startling that a little authority might be of some use. He ransacked his library and brought down his authorities, and when I shall draw attention to the case which he cited, and the parallel which he drew to a Catholic priest administering the rites of the Church to a dying patient, all present will be amazed at its absurdity and indignant at his injustice. Mr. Barry then proceeded to comment upon the case of *Norton v. Relly*, which had been cited by Mr. Whiteside from *Eden's Reports*, where a Methodist preacher had obtained an annuity of £50 a year, and other property, from a woman who was under a state of religious delusion, and over whom he had obtained a spiritual ascendancy. Mr. Barry read the judgment of the Chancellor, describing the defendant in that case as a "subtle sectary, who preyed upon his deluded hearers, and robbed them under the mask of religion", and his conduct and letters as "scandalous and blasphemous". The conduct of that man was pronounced to be "undue influence", but Mr. Whiteside was in a difficulty for law when he referred to such a case. It was a shocking thing to find any man standing up in an Irish court of justice and utter such a tissue of insult against his Catholic fellow subjects. It will go abroad to the Catholics of this country that the great orator and legislator compared a priest, whom he admitted to be sincere, enforcing upon the dying Catholic the performance of a moral duty, to the drunken, blasphemous, sensual, hypocritical impostor, such as the Methodist preacher was described. The Catholics of Ireland are a forbearing people, but those who submitted to injustice might be roused by insult, and if such doctrines as Mr. Whiteside enunciated were to prevail in courts of justice, it will be time for the Catholics of Ireland to rise again in their strength, and, content no longer with qualified emancipation and nominal equality, sweep away that monstrous anomaly, "The Establishment" maintained in Ireland, with princely revenues and a royal splendour, for the inculcation of a creed abhorred by the people whom it oppresses and insults. Mr. Whiteside invoked the genius of British liberty, and talked of constitutional freedom. My notion of constitutional freedom is civil and religious liberty — the right of every man in a

Christian country to practise the discipline and follow the moral dictates of his Church, unrestricted and uncontrolled. But if Mr. Whiteside's doctrines are to be upheld, the Irish Catholics are mocked by the appearance of liberty, but possess not its substance; they are not partakers of British constitutional freedom, but victims of English intolerance. The will in this case is impeached on the ground of what is termed by the counsel for the defendant, "undue influence". Now, "undue influence" is a vague and comprehensive term. The learned counsel has not himself defined it, perhaps it was not easy of definition, depending as it did in each case on the peculiar circumstances. His Lordship would no doubt give the jury the necessary and proper instructions on the point, but I believe it might be described as existing where a man by fraudulent and improper means obtained a control over the mind of another, or where, having obtained such a control by legitimate means, he abuses that influence to a sinister and improper purpose. Two recent cases of great celebrity will illustrate the doctrine. The jury had no doubt read of the cases of *Rossborough v. Boyce*, and *Egmont v. Darrell*. In the first of these cases it was alleged that a strong-minded woman had acquired a complete dominion over her husband, and had, by an unfair exercise of her influence, induced him to make a will in her favour, disinheriting his heir, and leaving to her the entire of the ancestral estate, which had been for centuries in his family. In the other case—in which I was counsel at the same side with Mr. Whiteside—the allegation was, that a clever attorney had obtained an ascendancy over a dissipated nobleman, and induced him to make a will in the attorney's favour, under the belief that the property was of no value, whereas it was worth one hundred thousand pounds. Of course, in referring to these cases, I am not to be understood as even suggesting the truth of the allegations. The cases have been compromised, and I only refer to the allegations as illustrating what has been and is regarded as "undue influence". Here it is sought to confound the enforcing of a moral duty with the improper acquisition of property. This is the first time that it has ever been attempted to apply the doctrine of "undue influence" to the due, the proper, the legitimate influence exercised by the Christian minister in reconciling the dying sinner to his God. I concede that if a clergyman, having obtained, even by means the most legitimate, an ascendancy over his penitent, abused, prostituted, and desecrated his holy office, by using his influence to obtain a will in his own favour, or to divert the property to some other illegitimate source, if, in a word, he were to transgress, for such a purpose, his own proper functions, and improperly interfere in the man's

temporal affairs, not only ought a will so obtained be scouted by a jury, but I would wish there were a law to bring the malefactor before the bar of criminal justice. The Catholic priest guilty of such an act would be degraded by his ecclesiastical superiors. But such was not this case. This is no case of priestly avarice, or spiritual ascendancy, exercised for the effectuation of temporal designs. It is the case where the minister of God, summoned to the bedside of the expiring Christian, finds that the dying man had during his life neglected the performance of a sacred duty, and there, in the legitimate exercise of his holy office, enforces upon that man a late repentance and a tardy reparation. I will here assume (but only for the sake of argument, for I deny the fact) that the will was obtained by the solemn coercion of withholding the last rites of the Church from him unless he signed it. Even were this so, I deny it would be "undue influence". It was the right of the priest, and his solemn duty, to remind the dying sinner of that duty to his children and his God which he had so long neglected; to tell him that it was not yet too late, that he had the power of securing, after his death, the education of his children in religious truth, and that if he disregarded that opportunity, and wilfully persevered in his default, the sacraments of the Church could not be administered to him; and if the priest neglected that, his duty and his right, he would himself be a moral delinquent. The argument of the other side rested wholly on the false assertion that it was the doctrine of the Catholic Church, that no matter how perverse and hardened a man may be in his sin, how determined in making no reparation to his offended God, that, nevertheless, if he only succeeded in obtaining the rites of the Church, he had procured (as we heard it termed here) "his passport to Heaven". I arraign that as a false, a diabolical calumny against the Catholic Church. If a man sincerely repents, and is prepared, by making any reparation in his power, to give his God an assurance of the sincerity of that repentance, then, and then alone, in that spirit of humble and assured contrition, is he permitted to approach the sacraments of the Church; then and then alone is his repentance sanctioned and confirmed by the sacred rites, and the dying sinner is led to hope that, through the boundless goodness of an all merciful God, he may expect pardon and forgiveness. The humblest, poorest, most uneducated Catholic in the country does not entertain such an idea as that attributed to us by Mr. Whiteside. If a dying Catholic were to tell his priest that he had been guilty of some particular transgression, but that he would make no amendment, offer no reparation, but persevere in his guilt, I deny that any Roman Catholic believes that the rites of the Church, even if administered in such a case, would avail

the impenitent sinner any more than the idlest ceremony that could be performed. It was falsely asserted by Mr. Whiteside that this man believed that the gates of Heaven would be closed to him unless he made the will. No; but he believed that if he persevered in sin, he could not hope for salvation. There was not a Catholic in the land who did not know perfectly well that if a priest capriciously or improperly withheld the rites of the Church from a man who was ready to receive them with a contrite and penitent heart, the transgression was conferred to the priest who refused spiritual consolation to his penitent. The whole of the case set up by Mr. Whiteside was based on a total misapprehension of the doctrine and practice of the Catholic Church. No man was entitled to the rites of the Church who did not approach them in a Christian spirit. When the penitent was contrite, the priest who refused to administer the sacrament was the sinner, and not the penitent. But it is said that the man was under the influence of fear, of fears of the world to come. Well, suppose he was, are we to be told at this hour of the day that the fear of punishment, and the hope of reward, are not the legitimate as well as the great incentives to the performance of social, moral, and religious duties? The preacher from every Christian pulpit, the moral writer of every Christian creed, the Scriptures themselves, sought to enforce the observance of religious law by the sanction of punishment and reward. It would, no doubt, be better if weak human nature permitted us to act from motives more elevated, from a higher sense of duty—if we loved virtue for its own sake, God for his great love of us; but our nature is frail, and religion seeks to win us to virtue, and deter us from vice by the hope of eternal bliss, or the fear of everlasting pain.

I will put this case to you. It is an illustration suggested in his evidence by the clergyman himself. Suppose that a dying man is in possession of a large sum of money, which he had plundered from an orphan, and that he wished to enrich his own family with it, and that it could only be restored to the rightful owner through the medium of a will. If the priest said to him: "The rites of the Church are unavailing to you. I am a minister of religion, entitled to administer those rites only to men who repent; but you are a plunderer, in the possession of the spoil. I cannot give you the rites of the Church unless you restore that property, and so endeavour to make your peace with God". If the dying man then made his will, restoring that property to its owner, I would like to know with what colour of right the family of that man could come into court and claim that property on the ground that the will was obtained by "undue influence". If influence of that kind were not due, proper, and legitimate, there

would be an end to all religion, all morality, all justice. Take another case, perhaps still more analogous to the present.— Suppose the minister of God called to the bed-side of a Catholic who had married a Protestant woman, by whom he has had a son. The marriage, however, is void, having been only celebrated by a Catholic priest; but she has always been treated as a wife, and the son as the lawful heir of his father. Suppose, then, that this father, having, for some fault of the son, real or imaginary, conceived some unreasonable, unforgiving, rancorous hatred for his offspring, has determined, unjustly and in a spirit of revenge, to leave his son in beggary, which will be the result of the father dying without making a will. And if the minister of God told that man that he was not in a frame of mind to approach the tribunal of penance; if he repeated to him that beautiful prayer, dictated by the lips of our Redeemer himself, "Forgive us our trespasses, as we forgive them who trespass against us". If he told him that our God was a God of peace and love and forgiveness, and that no priest could desecrate the sacraments by committing them to such a depository as a breast burning with rage and animosity; if he addressed him in a language of holy persuasiveness, which I shall not vainly attempt to describe, but which would on such an occasion flow from the priest's lips in accents of benign eloquence; if, under such influence, the man took his son to his heart with tears of reconciliation and love, and executed in his favour the necessary will drawn up by the priest, I ask you, gentlemen, with what favour you should regard the distant heir-at-law who should contest the will on the ground that it was obtained by "undue influence"? Gentlemen, be your religious professions what they may, would you not agree that if a Christian minister did not act as I have described, he would not only be negligent of his duty, but a disgrace to the ministry of the Church of which he was a member. But let us see how this supposed case of "undue influence" is sought to be made out. My learned friend, Mr. Whiteside, and, indeed, his words were repeated by Mr. Walshe, asserted that the will was a document contradicting the actions of Maguire's whole life; and the first foundation for this supposed contradiction was the remarkable one, so strongly, and at such length, pressed upon you by Mr. Whiteside, namely, the fact of the marriage of Maguire in the Protestant Church; and Mr. Whiteside told you that in the higher walks of life, when a marriage takes place between a Protestant and a Catholic, a double ceremony is performed, or rather the marriage ceremony is performed first in one place of worship and then in the other, but Mr. Whiteside said the humbler classes were not so particular, and had but one

ceremony, and Maguire had that one performed in Church. Is it possible that Mr. Whiteside can have forgotten the law which he must have learned in the Yelverton case? Has he forgotten the statute by which, had the defendant married Maguire in the Catholic Church, the marriage would have been void, she would have been a concubine, and her children bastards? What is the meaning of Mr. Whiteside, the great orator and advocate of Mrs. Yelverton, wandering away into such a labyrinth of error and deception? Does he think that the woman would have been fool enough to get married in the chapel, and thus place herself in that position which would have permitted Maguire at any time to leave her for England or elsewhere, and have given her no more legal claim on him than that possessed by any woman who walked the streets? Maguire married in the Protestant Church, where he was bound by law to get married, if he was to be married at all. So much for the first step of Maguire's contradictory life, and for the argument upon this marriage, elaborated by Mr. Whiteside, and pressed and enforced upon you for nearly half an hour. Mr. Whiteside said that the baptism of the children in the Catholic Church was quite immaterial, because he (Mr. Whiteside) recognized the baptism of the Catholic Church, though I cannot say he respects the ministers of that Church. (Mr. Whiteside—I don't think you have any right to say that.) Gentlemen of the jury, my learned friend felt in his heart that if he were talking to rational men for years, he never could get over the fact of the determination of the father of these children that they should be brought up in the Catholic faith, as manifested by his having perseveringly insisted that every one of them should be baptized in the rites of the Catholic Church. I will pass by the baptism of the first and of the second child, but I will refer to the remarkable facts that transpired respecting the baptism of the third child, showing the determination which existed, and which the wife well knew to exist, in this man's mind, that Catholics his children should be, and in doing so, I will bring under your notice circumstances which will exhibit in a contemptible, if not an odious light, the conduct both of the mother and grandmother of that helpless babe. That third child was born in England, and was brought home by her mother. That mother had been at home with her child for three or four months before the arrival of her husband, which took place in August, and for that long period this Christian mother carries about that child at her breast, without seeking on its behalf, what she admitted was necessary, the sacrament of baptism. I know, gentlemen, that there is a new doctrine now, that baptism is not necessary. That is not the creed of the Catholic Church, nor of

the humble Protestants of this country. Protestant metaphysicians may believe that baptism is not necessary to salvation, but this woman's mother has sworn in her evidence that she herself entertained a different conviction; yet they kept that child for four long months, exposed to all the emergencies and dangers of infancy, without taking the trouble to get a priest to perform the baptismal ceremony. The woman admits that she never frequented a place of worship until after her return from England, when she came to reside under the influence of her father, the sexton of the church; and this is the person held up to you as a model woman, the pious Christian, the affectionate wife, and the loving mother, she! who, as soon as her husband was in his grave, transfers her children, like an irksome burden, to the care of the proselytiser and the stranger. That baptism of the child, in July, 1862, is one of the most important facts in this case. When does the baptism take place? Careless and negligent to the last, the mother, on the 28th of July, is made aware that her husband is on the eve of his return from England. Then she, who had for four months neglected the baptism of her infant child, immediately thinks of it. She hurries to get the ceremony performed. Where, and by whom? In the Catholic chapel, by the Catholic priest, for she dare not face her husband if she could not announce to him that his child was baptized in the Church which he himself professed. Gentlemen of the jury, if you approach this case with minds unbiased, and give that part of it to which I have just adverted, its proper weight, I will ask you with confidence whether there could have been, as suggested by Mr. Walshe, anything like an agreement between Maguire and his wife, or even an acquiescence on his part, that the boys should go with the father and the girls with the mother? If there was any such agreement between them, why was that child—a girl—taken, in the absence of the father, to the Catholic Church, and there baptized, the ceremony hurriedly gone through, but that the mother might be able to give an account of her stewardship to her husband, who would ask on his return whether his child was yet a Catholic? The proposition asserted on the other side is, that the will in question is a contradiction of the previous acts of Maguire's life. I say that the most important acts of Maguire's life for your consideration, are those in reference to the baptism of his children; that ceremony which unites the child to Christianity—which stamps the infant head with the cross of the Redeemer; that most solemn event of infancy, the sanctified solemnity of which is recognized by every Catholic parent. Maguire persevered in having his children baptized in his own faith, in which he was resolved to rear them; living or

dying, he never forsook the great object of his heart and life. Sinner though he might be, bad Catholic as he was, he determined to have his children educated in that faith in which he himself hoped for everlasting life. But it is said that he allowed his children to go to this Protestant school. Well, now let us see the value of this circumstance. Mr. Barry proceeded at great length, and with great argumentative power, to analyze and comment upon the evidence bearing on this part of the case. He argued that no reliance ought to be placed on Maguire having permitted the children to be sent to the school, because they were first sent in his absence by the grand-parents, who had the charge of their support while he was away in England; that when Maguire returned, he was, through poverty, wholly dependent on his Protestant father-in-law; that it was vainly suggested that he was able to contribute to his own support; that he was obviously steeped in poverty, for otherwise he could never have submitted to the ignominy, the pollution of sleeping with his young wife, in the same room with his father-in-law and his wife. He was, therefore, wholly dependent on them, and dare not displease them. Besides, the children were so young as to be incapable of receiving any religious impression of a distinctive character, and it was distinctly proved by the testimony of his brother and other witnesses (for whose complete credibility against the evidence of Mrs. Maguire and her mother Mr. Barry most powerfully contended), that Maguire had expressed his dissatisfaction at the elder child remaining at the school, and his firm determination, if he were restored to independence, to withdraw his children from the Protestant and send them to a Catholic school. Mr. Barry proceeded—That is all the evidence which I believe has been given in this case upon the matter urged, relating to the children going to the Protestant school, and if there be in this court within hearing any Catholic father, or outside it any Catholic father who may read of this case, who either from necessity or from negligence allows his children to be sent to a Protestant school, especially if he be an humble man, let him take warning by this case and tremble lest his necessity or negligence may be distorted after his death into an agreement for the religious perversions of the offspring whom he loves. These are the observations I make to you on the subject of the school. I have shown you that Maguire was coerced to obey the wishes of his father-in-law, because he had no means of independent livelihood, and he thought no harm would result as the children were so young. I ask, and I have, I hope, convinced you on the evidence, that he expressed to his brother, and to his wife, and entertained in his own mind, the firm unalterable

determination, that if it pleased God to spare his life, and to restore him to a position of independence and free action, he would send his children to the school of the creed which he himself professed. I wish to dispose altogether of the evidence of the Dunnes on a collateral question of the case before I approach the evidence bearing directly on the issue we have to try. The evidence of the Dunnes in the next place is pointed to the allegation on the other side, that this will was unknown to Mrs. Maguire until after her husband's death. Now, whether the existence of the will was known to the woman or not, is immaterial, for even though its preparation and execution may have been sedulously concealed from her, concealed from design and on purpose, still the document may be as honest, as valid, and as legal as ever will was that came from the pen of a man. If it were kept secret, what was more natural? She was under the influence of her father and mother who were in the same room with the sick man. That sick man was depending on them for medicine, for food, and for charity, and if the thing was kept a secret from the wife, it would be a circumstance as immaterial as whether the day upon which the will was executed was a rainy or a sunny day. If Mr. Keon came into the witness box and said, "I did not let the widow know about the will, and I concealed it because I knew she was under the influence of her father and mother, who might urge her to induce the dying man to retract what he had done", I would with as much confidence call upon you to pronounce that will valid, honest, and legal. But, gentlemen, if the question of her knowledge of the existence of the will comes to be material, I ask you to believe upon the evidence you have heard, that she knew of it on the very day on which it was executed, and that the conversation between her and the Dunnes took place as certainly as that there is a God in Heaven. A great deal of stress was laid upon the alleged fact, that the woman was that morning at the church with her father. It is admitted that she was out, and that she came in. No witness on our side ventures to say where she was, nor does it matter one iota to our case where she was. But she says she was in the church, and so does her mother, and they seem to think it a most important matter to establish. I impeach the evidence of the mother, and I impeach the evidence of the daughter. There was a witness examined whom I have no reason to say was not an honest, upright man; I mean her father, to whom they did not dare to put the question as to whether his daughter was with him at church that morning. That man appeared to me to be an old soldier; I believe him to be honest, that he would not turn to the right or to the left for

the purpose of doing anything that he did not believe to be honest. They made it a vital part of the case that Mrs. Maguire was in the church that morning, and they risked one of the most important issues upon that fact. The day in question was a remarkable day—one that could not escape the recollection of any man. They asked that witness (the father): "Do you recollect the morning on which the priest was let in to attend your son-in-law?" He did. They then ask him: "Where were you afterwards on that morning?" He said: "At the church". But they let him go without asking whether his daughter was with him! It was a remarkable thing that the wife, who had to get up in the dead of night to have the rites of the Church administered to her husband, should be sent away to perform anything not of unavoidable necessity, merely for the purpose of going, if required, on some errand in the barrack. The father was produced to prove that she went there, yet he was allowed to leave the box without the question being put to him. As I have said, I care not whether she was there or not; it is nothing to me; my case is, that she was honestly and faithfully called on the morning that the will was executed, and that the answer was made that she was out. I care not where she was, but they who think it necessary to show that she was at church with her father, when that man is produced, dare not ask him the question. That Lambert was their only honest, unimpeachable witness; his wife, the gossiping woman, who says, "Begad I don't know", and who permits her daughter to be the intimate associate of Brigid Kelly, the mother of a bastard, was not an honest witness. I believe that if that old man knew who Brigid Kelly was, he would not have permitted his daughter to associate with her. I see him there now. I believe he assents to me when I say that he would not have allowed her to pollute the doors of an honest man; his wife did so. It is a hard case upon women who err, but it is the inevitable result of our social system; and of all countries in the world, Ireland is that in which the woman lost to virtue is held in most detestation and horror. I ask you, gentlemen, whether that woman is pure and chaste, who, in lieu of the husband who is dead, and the children whom she has sent away, will take to her breast the mother of a child of shame? Let us see what the Dunnes depose to. Mr. Barry then proceeded to analyze and comment upon the evidence of the Dunnes, and to establish from that evidence that, notwithstanding Mrs. Maguire's denial, she knew of the will immediately after the execution of it, and that she then expressed herself rejoiced that the children were to be taken care of by the Reverend Mr. Keon. Mr. Barry proceeded—My learned friend said that it is impos-

sible that she, "a religious Protestant", could have rejoiced that her children would be brought up in this horrible Catholic faith. I have referred to her own practice of religion, and have shown that a church she never went to until coerced by residence with her father. She carried at her breast for four months her unbaptized infant, without ever thinking of performing the duty of a Christian mother until the eve of her husband's arrival from England. You are asked to believe that this woman, who makes a companion of Brigid Kelly, is horrified at the idea of danger to her children's faith. Was there ever any proposition more absurd? To parade that woman before you as one concerned about the religious faith of her children, is an insult to your understanding. I say that she cared little for doctrines, and would be only too glad to let any person rid her of the burden of her children, whom she was anxious to exchange for the society of Brigid Kelly. Are the Dunnes perjurers? Suppose they had the incredible ingenuity to invent what they have deposed to, have they invented it, or have they sold their consciences and their souls to some suborner? Will it here be suggested (as it has been elsewhere) that such is the creed of the Catholic Church, that for the purpose of gaining a particular object it is permissible, even in a court of justice, to depart from truth, and that a Catholic may, if his Church be thereby served, commit perjury? If there be in this court one man who, being an Irishman, has a mind so poisoned by prejudice, and so unacquainted with the tenets of the Catholic Church, as to believe that, let him retain his belief, but I do not envy him either his conscience or his judgment. No Catholic would think such perjury justifiable. The humblest in the land, as well as the highest, would detest such a doctrine. To say the contrary is a calumny on the Catholic Church, and if any man holds that belief with respect to her doctrines, he must be either an ignorant dupe or a bigotted knave. Exercise your judgment, independent of prejudice and independent of religious bias, analyze the evidence, and recollect that the proposition you are asked to believe is, that these two women, Mrs. Dunne and her daughter, have conspired to swear to that which they knew to be false. Human nature has its defects, but I do not believe that in Ireland there would be found a mother who would sit down with her child and concoct a perjury, and thus peril, not alone her own salvation, but that of the offspring of her bosom. Is there a mother in Ireland prepared to make such a compact with her child, who could endure existence, compelled daily and hourly to meet the daughter whom she had consigned to perdition, conscious of their carrying with them to the grave the horrid mutual secret that

they had united to commit deliberate perjury? If it be suggested that Catholic doctrine would tolerate such infamy, I would only pray to God to forgive the man who makes the suggestion, and that his heart may be changed. Gentlemen of the jury, Mrs. Maguire's testimony only bears upon this part of the case; and, as I am upon it, I may, for once and for all, dismiss her with a few observations. She pledges her oath, no doubt, to the falsehood of all the Dunnes said, but did you hear the way in which she gave her testimony upon another portion of the case. Judy Corr, in the presence of that woman, swore that she was sent by Maguire to Father Keon, and that she brought back the document. Mrs. Maguire was in that box asked whether she heard her husband sending for Father Keon, and her answer was: "He might have done so". She says again: "I do not know whether he did or not", giving each answer with a hesitation, and a quivering of the lip showing the falsehood of her answers. She is again pressed, and at last she says that she did hear Maguire sending Judy Corr for Father Keon. Sergeant Armstrong asked her why she prevaricated, and her answer was: "I forgot it". She prevaricated about the answers which she believed would vitally affect the issue in this case. She heard her able advocates in this case dealing with the impossibility of what was said of Judy Corr, and she thought it of importance to contradict Judy, and accordingly she did so, though unnecessarily;—her tongue went faster than her judgment. She was willing to contradict anything to serve her purpose, but she had to admit that she did hear her husband sending Judy Corr to Father Keon, after having one minute before given the equivocating, shuffling answer, that "he might have done so". She was sworn to tell the truth, the whole truth, and nothing but the truth. She attempted equivocation and falsehood, and when the questions were still pressed on her, she burst into tears, overpowered by her sense of an exposure which shocked every man in court. She swore she never heard of the will, and the mother swears she never heard of it. She thinks it right to make it part of her case that she never heard of the will. She tells you that she heard that Gilligan, Donohoe, and Father Keon were in her room on the day in question. Donohoe, a stranger, had never been there before. She was told that while they were there she was called for, but that she never inquired the cause. Was it not extraordinary that a woman should leave a husband whom she believed in danger of death, and that when informed on her return that Father Keon, Gilligan, and Donohoe had been there, she would not have thought the occurrence so strange as to have inquired what brought them there, and what

they were doing? Mrs. Lambert has sworn that the priest turned them out of the room. Here I may pause to observe that I really wonder that this point was ever relied upon by the other side. In the Catholic Church, and I believe it is known to every man of education in the country, when the priest comes to hear the penitent, he wishes to be alone with him; and although the administration of the sacrament may take place in the presence of every one, I can well understand that a dying sinner, whether Protestant or Catholic, would wish that strangers should withdraw, and that he should be left alone with his clergyman. I cannot fancy anything more repugnant to the minister of any religion, than to administer his ghostly counsel in the presence of idle listeners. So much for the statement that Father Keon directed them to withdraw for the purpose of the will. He directed them to withdraw before he knew anything at all of the position of the parties, or even conceived the possibility of a will. Mrs. Lambert tells you that it was understood that every one should withdraw when the priest was with the sick man; but, strange to say, although she withdraws, although she even takes away the child, she leaves behind her, not only the priest, but Gilligan, a strange man, Donohoe, a stranger, and yet she says it never struck her to inquire what they were doing. I asked what she thought they were doing, and she said that she thought Donohoe might have come to claim a debt due to him by Maguire, and then she says she never mentioned to her daughter that Donohoe was there. Now, if her story be true that she thought that Donohoe came to claim a debt, it is the very thing that she would have told the daughter, and is it not incredible that when Mrs. Maguire was informed that these two men, strangers, who had never been in her place before, had been there with her husband and the priest, and that she was called for to the room whilst they were there, that she would not at once have anxiously inquired what was their business and what she was called for? She asks you to believe this monstrous, absurd, incredible fiction, that she did not know what brought these men there, and that she never inquired. I ask you to believe that, within fifteen minutes after her arrival at home, she became, as the Dunnes swear she did, aware of the execution of the will, acquainted with the nature of the business done in her absence, and that if she did not ascertain it from her husband, she would have gone to Gilligan and to Donohoe and would have adopted every means in her power to ascertain what this business was. I rest this part of the case, with confidence, on the evidence of the Dunnes, and I call on you to discard the evidence of Mrs. Maguire and her mother as incredible and absurd.

The Court then retired for a quarter of an hour.

Mr. Barry then resumed—Gentlemen of the jury, I come to what is called the *factum* of the will. I believe I shall not be required by my sense of duty to my client to detain you much longer. I am glad of it for your sake and for my own. I have disposed of the witnesses whom I might describe as bearing on the outlying and collateral portions of the case. I now come to the evidence of the two witnesses to the will, Gilligan and Donohoe, and I shall then conclude with a brief retrospect of the evidence which, I have no doubt, is indelibly imprinted upon your memories, the evidence of Mr. Keon. Now, the first witness to the will is Gilligan, and how does he become an actor in the transactions connected with the question which you have to try, namely, whether the execution of the will was the free, voluntary act of the testator, "without undue influence"? No man performs any act without some influence, the best we can hope for is that we shall be guided in our acts by a proper influence. Well, in considering whether this is the lawful act of the testator, or whether, as alleged at the other side, it is the result of fraud and contrivance, the first thing you should ask yourselves is, "Who are the parties concerned, and how do they appear on the scene of action?" Who is Gilligan? I have heard Gilligan attacked and accused of being a party with Father Keon to "a contemptible device", to going through the empty form of calling for Mrs. Maguire when they knew she was absent. Is there anything in this case to justify such a slander? Who is Gilligan? Was he, as Mrs. Lambert said, the drunken companion of her son-in-law? She told the infamous falsehood in your presence, but she dare not stand by it. Why was Gilligan selected? Was his selection the effusion (as we are told) of the contriving brain of Father Keon? Father Keon tells you that when he explained to Maguire that it was in his power to provide against the perversion of his children after his death by the appointment of testamentary guardians, that he asked Maguire whom he wished to appoint to that duty. Was that the proceeding of a man dealing with an imbecile who was "to do everything suggested by Mr. Keon"? Then follows the most rational and proper inquiry. "Have you a brother or other relative who would be bound to your children by ties of affection, and by the remembrance of the days of his childhood which he spent with you in innocent love and harmony"? Father Keon put that question to Maguire as a man who could think for himself, speak for himself, and act for himself. He says at once, "I have a brother, but, like myself, he is not a good Catholic", or

"he is a bad Catholic"; but "I know a man named Gilligan, a good practical Catholic, an honest man, a religious man, a member of a Confraternity". I hope I wont provoke a sneer by mentioning that he is a member of one of those Confraternities which are an honour to our country. "He", says Maguire, "will act as guardian". Nobody else was mentioned, and then the priest says, "I will act as one myself". What then occurs? The priest leaves him, and this man, who is said to be a helpless, superstitious dupe, of his own motion sends his wife for Gilligan, and you are asked to believe that in sending for him he was doing what he did not wish to do, what he would not have done because of the affection he had for his wife (whom he employed as the messenger), and because it was at variance with the previous course of his existence. Of his own motion he says that Gilligan is a man whom he would like to take charge of his children. Voluntarily and as a free agent he sends his wife for Gilligan, the man who was vilified and abused, but who was selected by the dying man as being a good and pious Christian. Though Maguire himself had been a bad Catholic, he respected the man whom he knew to be upright, moral, and religious. I ask you to take Gilligan's character from the man who was then dying, and not from the frenzied language of the counsel for this woman. Gilligan comes to the man's bed side when he was uncontrolled by any human being, acting as a free agent, operated upon, if you like, by the influence of a desire to do his duty to his children. If that be "undue influence", I give up the case; but I deny that it is, and until the highest court has pronounced it to be such, I shall not believe that it so regarded by the law of this country. The sick man tells Gilligan that he was about making his will for the purpose of providing for the education of his children, whom he should soon leave to the tutelage and guardianship of others. He asks Gilligan, as a friend, to take upon himself the guardianship of his babes. This is the man supposed to be incapable of acting for himself—everything done "for him, not by him", of whom the will in question was not the act, but the act of a conspirator. He says, "Go for Scully, I wish him to be a witness to my will", and this now leads me to one of the most extraordinary arguments I ever heard in a court of justice. Where (says Mr. Whiteside) is Scully? Why have the plaintiffs not produced Scully? Because (says Mr. Whiteside) Scully, if examined, would have told what took place between him and Gilligan, and have exposed the conspiracy and fraud. Gentlemen, a single syllable of what took place between Gilligan and Scully could not be given in evidence *for us* upon this trial. I asked what message Gilligan had carried from Scully, and it

was objected to by the counsel; but if we had produced Scully, and had asked him what passed between him and Gilligan, Mr. Whiteside would blow up the roof of the court at the idea of attempting to give such illegal evidence in a court of justice. I quite agree that if there be a man whose testimony is legitimate and material, and the party who ought to produce him withholds him, his absence speaks trumpet tongued against that party. Gentlemen, what passed between Scully and Gilligan could not be given in evidence *for us*, nor could we have made Scully *our* witness; but *they* might have produced Scully, and have examined him as a witness. He was paraded by them as an honest and truthful man, yet they did not examine him. Why? Because he would have confounded them; he would have thoroughly exposed their miserable insinuations. We could not produce him. The counsel who challenged us for not doing so, must have known that, unless we were children or idiots we could expose such a fallacy, and yet, for a momentary triumph, he adopted so uncandid a course. Well, Scully refuses to be a witness. He was a barber, and he thought that it was better to remain at his business, shaving his customers, than to witness the execution of a will. Gilligan says that he then went to Father Keon, who was not at home, that he then went to his breakfast, and that afterwards, by the merest accident, he met Father Keon. Gentlemen, is this man, selected by his dying friend as a good and pious Christian, inventing all this for the purpose of deceiving you, by committing odious perjury? But for the accidental circumstance of Scully's refusal, and his—in consequence—seeing Father Keon, the will would have been executed in Father Keon's absence, and then what would become of this great case of conspiracy and "undue influence"? The fact of Father Keon being there at all was owing to this, that Gilligan met Father Keon, and told him that Scully, the barber, would not witness the will, "But", said he, "I'll tell you who will witness it; I will get Mr. Donohoe". They go to Mr. Donohoe, the only one of our witnesses that was not assailed by the most intense vituperation from the other side. They turned into the first man they met, without secrecy or concealment, without any effort to secure a fitting agent for their purpose, and yet you are asked to believe that Father Keon, the priest, and Gilligan, the pious Catholic, were conspiring, by artifice and fraud, to obtain from the dying man this document, which is, therefore, impeached as fabricated, illegal, and invalid. Did they tell Mr. Donohoe not to say a word about it to Mrs. Lambert or to Mrs. Maguire? Did they suggest secrecy to him? If the acts of men are not to be tested by conduct like this, I do not know what will become

of the transactions of life. If Gilligan and Mr. Keon were the two conspirators they were represented, would they go at once to the first man they met, and take him freely, openly in the broad noon of day, in the presence of every opportunity for exposure and detection, and get him to witness this will? Would they have brought him into that room, and after he had witnessed the will, allow him to go out among a crowd of gossiping women without having suggested to him that if he were asked any questions he should not say a word about the will? As soon as Donohoe walks into the room, he at once says, careless of who might be within hearing,—whether Mrs. Lambert, Mrs. Maguire, or Mrs. Dunne,—“I am come to witness your will”. Was that the act of a man who was the tool of two conspirators? He deposes to what took place, the due execution of the will. A great deal was said as to who first read the will. O'Donohoe swears that it was read by Gilligan, Father Keon, and Maguire. Was the seal of secrecy imposed on him? Was this a gloomy, dark, hidden contrivance of fraud, to be locked in the breast of the conspirators alone, and to be concealed from all the world? If so, again, I ask, would that man be allowed to go away without hint or suggestion that he was to keep the matter private? Now as to the presence of Mrs. Maguire, the counsel for this Institution (for it would be a farce to call her the defendant in this action) say she was not called on to be present, and they lay great stress on that circumstance. Mr. Keon says it was a matter of the supremest indifference to him whether she was present or not. He never took notice of her absence or her presence. He would have got the will, whether she was present or absent, but they endeavour to make out that she was excluded by contrivance. Gilligan swears that he suggested it would be well to have Mrs. Maguire present, and that he called her. Father Keon and Donohoe also say that she was called. There are three witnesses to the fact of her having been called, and yet Mr. Whiteside arraigns it as a scandalous lie that she was ever called at all. That suggestion of Mr. Whiteside's is simply knocked on the head by her own evidence, for she swears that on her return she was told by the women that she had been called. You will, gentlemen, decide this case according to your judgment and your conscience, but I do not believe that there is a man in that box who does not regard it as an odious suggestion, that Gilligan and Keon had concocted this contrivance for the purpose of afterwards being able, with verbal truth but substantial falsehood, to say that they had her called. I do not, I cannot believe it. I do not rest my refutation of that calumny upon the sacred character of Mr. Keon. Mr. Whiteside was

obliged, in portions of his attack upon him, to admit that he believed Mr. Keon was sincere. I take that admission, that he is a sincere minister of God, but I do not rest my refutation of the calumny against him upon his character as a Christian minister, or upon his demeanour, or any personal claims upon your respect. Such calumny refutes itself. It is absurd, it is monstrous, it is incredible, it is repugnant to common sense. It is impossible that these two men could have contrived at that moment to have her summoned, knowing that she could not come, for the base purpose of being able to say, upon a trial which they could not anticipate, that they had her called. There are propositions which carry with them their own exposure from their innate absurdity and monstrosity, and the statement that these two men concocted that scene of calling Mrs. Maguire, because they knew the woman was out, is one of those allegations, such as I have referred to, bearing on its face the marks of its own incredibility. If she was called, what becomes of this case of concealment? Gilligan says, naturally enough, "Perhaps it would be well to have Mrs. Maguire here". I do say that the fact of their having called Mr. Maguire is of great and vital importance. It scatters to the winds the notion of secrecy and fraud. "But", said Mr. Whiteside, "you cannot believe Gilligan at all, because he is contradicted on a most vital point by Donohoe". Gilligan says that the sick man said, after he had signed the will, "My mind is easy now", whereas (says Mr. Whiteside) Donohoe does not say so, and therefore (argues my learned friend) Gilligan is a conspirator, Gilligan is a perjurer, but Donohoe is an honest man. Gentlemen, it may be assumed that the man who was on his sick bed did not speak in a very strong tone of voice. His observations may not have been made with that stentorian voice such as we sometimes hear in this court; but what could be more natural than that he should say to his old friend, Patt Gilligan, "My mind is easy now", and that he should not say it to a stranger? Did you ever, gentlemen, upon any occasion, compare notes with a friend? I venture to say that if you, being impanelled in that box, were handed pen, ink, and paper, and asked to take full notes of a case, you would all give different versions of what occurred; and, although you might be substantially correct, still, if you came to compare your notes, you would find very material discrepancies. Donohoe says that, immediately after witnessing the will, he shook hands with Maguire, and took his leave; and you are called on to believe that because he did not hear Maguire saying "My mind is easy now" that Gilligan is swearing falsely. So much for the evi-

dence of Gilligan and Donohoe. I come now to the evidence of Mr. Keon, who has been favoured with the epithets of "relentless priest" and "arch-conspirator". I do not attempt to appeal to your feelings or sympathies, or to your respect for priest or layman, but I ask you to test this evidence by its own intrinsic merits, regardless whether the man who uttered it be a priest, parson, or layman. They took a cruel and unsparing advantage of his peculiar position as a clergyman, in being obliged to refuse to answer either affirmatively or negatively as to what took place under the seal of confession. They take advantage of that, and charge the inevitable result of that position to be conclusive evidence of dark fraud and contrivance. You saw the manner in which he gave his evidence; his demeanour in the box—in the witness-box, that great touch-stone by which the juryman can test the witness's truth. If, in the face of all, you come to the conclusion that he is an "arch-conspirator", find a verdict against him, but the verdict will be yours, not mine. Gentlemen, Mr. Keon tells you that his visit to Maguire came in the ordinary course of his clerical duties; that he had never known the man before; that he knew nothing whatever of him, save that he found his name on the list of sick calls, and that he came to visit him accordingly. He says that he found him in bed perfectly clear as regards his mental condition. I could not well understand my learned friend, Mr. Walshe, as to whether he really meant to suggest that Maguire was not in a firm state of mind at the time of the making of the will. Whatever learned counsel may suggest, there exists in this case such evidence as establishes that, up to the hour of his death, he was clear and vigorous in his intellect; that he was of determined temper; and that he was a man who could no more, by futile suggestions, or false alarms, or superstitious fear, be induced to do that which he did not wish to do, than you would be induced to denude yourselves of your worldly substance at the suggestion of some spiritual adviser. On the first day that Father Keon came to the sick man he only heard his confession. He is asked if, on that occasion, he was told the wife was a Protestant, and he said he was not told the fact out of confession, but would not say yes or no as to what took place in confession. That answer given by Father Keon was the origin of such a scene as I never witnessed in a court of justice but once, and that was when another counsel, not now here, asked Mrs. Yelverton to state something which passed under the seal of confession. Who was the man who stood up on that occasion, swelling with honest indignation, amid the cheers of the gallery, to denounce the man who dared to ask that question in an Irish

court of justice? James Whiteside! and mark the difference between the two cases. In the Yelverton case the question was asked of the penitent, who might have answered if she chose. But Mr. Whiteside seeks to interrogate the priest, who is bound by ties the most tremendous known to man to yield his life sooner than reveal what was told him in the confessional. Mr. Whiteside talked of the predicament he was placed in—it was the predicament his case placed him in, or rather the predicament he placed himself in. He said that the priest claimed to be above the law because he refused to tell what took place in the confessional, and that he broke his oath of evidence which bound him to tell the truth, the whole truth, and nothing but the truth. There is not an attorney's clerk of six months' standing that could not expose that fallacy, who does not know that the law of this country recognizes in evidence what is called privilege, that is, certain matters which the witness may decline to answer, although he is sworn to tell the truth, the whole truth, and nothing but the truth. The interpretation of the oath is, that the witness is to tell the truth, the whole truth, and nothing but the truth, if it be legal evidence, properly asked and proper to be answered. If you told your attorney something confidential, and your antagonist, on a trial, wanted him to disclose it, he being sworn to tell the truth, the whole truth, and nothing but the truth, the attorney would say, "I cannot tell you, because it was told me in confidence by my client". That would be the privilege of an attorney for his client; but it is denied to be "English" law, that the privilege should be extended to the communication of the penitent under the solemn seal of confession. When that case arises we will discuss it. An attempt was here made to get in the evidence by a circuitous course, but his Lordship put a stop to that, and the matter has not been pressed to a judicial decision. I dismiss the subject with this observation, that when the case arises we will try whether it be *Irish* law, to be administered in an *Irish* court of justice, that the seal of the confessional is not to be regarded by our tribunals. You are not to infer, because Mr. Keon refuses to answer as to what took place in the confessional, that the fact was either the one way or the other, and the fact of his knowing or not knowing that the wife was a Protestant is perfectly immaterial. We are not to inquire whether he ascertained on the first visit that she was a Protestant or a Catholic; our inquiry is, whether the will was extorted from a man against his own inclination, by threats, by coercion, or by refusing to give him the rites of the Church, if that be "undue influence". I will admit, for the sake of argument, that he knew on the first visit she was a Protestant, and that he told him his children

should not be permitted to go to a Protestant school. Am I then to be told that, according to the law of this country, this was a wrong thing, an unfair thing, an undue thing, an improper thing on the part of a priest of the Catholic Church? if so, we must alter that law. I believe that such a proposition would not be advanced in a court of justice in any country in the world but this. This is no case of a priest having a will made in his favour, leaving him property. This is no case of a priest abusing his spiritual mission by an improper interference with another man's temporal concerns. You are asked to regard the spiritual counsel of a minister of religion to a Catholic parent with respect to the education of his children "as undue influence". I say it would be a desecration of his sacred office if he neglected to tell that Catholic father what was his duty to his children. Take it as you like, I care not if, fifty times over, he told Maguire that he should not send his children to a Protestant school, I would still demand a verdict from you, and I would ask that verdict because he would exercise, not "undue influence", but due, holy, pious, and legitimate influence. Of what is the spiritual adviser to talk to his penitent, if not of the performance of his moral duties? Before a will is even thought of, Father Keon asked him how it happened that he sent his children to a Protestant school. He says, "I was delicate; my children were young, so young, indeed, that they were incapable of receiving impressions of a controversial character, but it was my mind and intention, when I would get better health, to take a house for myself, away from my father-in-law and mother-in-law, and to send my children to a Catholic school". Gentlemen of the jury, I heard no suggestion that, from the evidence of Mr. Keon, you are to pronounce him a perjurer. If the suggestion of the other side be that he came into the box to commit perjury, deal with it—I care not what is your profession; deal with it, jurors, on your oaths; it is too loathsome for me, Catholic gentleman as I am, to soil my lips by discussing it. He swears to you that this will was the free, voluntary act of Maguire, not extorted by moral or spiritual fear, and that it was not the act of a man imbecile or insane. Before there was any mention of the appointment of testamentary guardians, Maguire said to the priest, in reply to the question as to why he allowed his children to go to a Protestant school, that it was his intention to get a place of his own, and to send his children to a Catholic school, where they would be brought up in the faith he professed. That was proof of the will and wish of Maguire that his children should receive the instruction of Roman Catholics, and yet you are asked to believe that this will was extorted from him against his will and judgment, under coercion and miserable

fear. If you should come to that conclusion, there are good men in this land who, having read the evidence in this case, will be startled and grieved. Where is the "undue influence"? Is it "undue influence" for a Catholic minister to tell a Catholic layman that it is his duty to provide for the religious education of his children? Mr. Keon tells him that he can do so by the appointment of testamentary guardians. Was there in that, "undue influence", conspiracy, fraud, and vile deceit? Maguire asked who would draw the will for him? Well, said Mr. Keon, "he was a very poor man and could not pay a solicitor"? Mr. Whiteside says, "that is not evidence, it is reasoning", well, it is reasoning and sound reasoning. Maguire simply wanted to give a simple direction, and, accordingly, it was very easy for Mr. Keon to take a sheet of paper and make plain what was meant. But his drawing up the will is (argues Mr. Whiteside) clear fraud! Should Mr. Keon have driven off to some great conveyancy solicitor in Dublin, and have told him that there was a will to be drawn at 9 Hendrick Street, for poor Mike Maguire, and to come and take his instructions in due form of law? These suggestions are so absurd, that I do not well know whether to treat them with ridicule or indignation. Mr. Keon said, "I will draw up the form of a will for you—you can manage to get it executed yourself. I asked him whom he would wish to appoint guardians, whether he had a brother or other relative?" Was that "undue influence"? Maguire said he had a brother, who, like himself, was not very attentive to his religious duties, and, consequently, he would not wish to have him appointed as guardian over his children, whom he wished to have reared Catholics. Father Keon then offered himself as one of the guardians, and after that heard the man's confession. Gentlemen, all that took place uncontrolled by confession, or by any of those baneful or mysterious influences by which Mr. Whiteside tells you this class of men, the priests, want to put themselves above the law. You are asked to believe that the will, the result of the conversation which was held outside confession, outside everything that could be used to coerce, was not the free, voluntary act of the man, and that it was extorted by spiritual terror. Father Keon says that after the conversation he heard his confession. He then says, "I went home, and, as best I knew, drew up the form of a will". You have seen that will—you will see it. But it is challenged for one thing that took place. The man himself said that he did not think his brother would be a good guardian, because he was not a good Catholic. Well, on reflection, it struck Mr. Keon, and I am sure it would strike any man of intellect who was dealing with the subject, I care not who he was, whether priest, lawyer, or layman, that this man's brother

would be a proper person to name as one of the guardians, and upon that circumstance they base the argument, that indeed it was all a contrivance of Mr. Keon. Now, with respect to the non-appointment of the mother as a testamentary guardian, as suggested by the learned judge, it strikes me, with all respect to his Lordship, that having regard to the fact that the will was intended to provide for the education of the children, the appointment of the mother as guardian, would be the last thing which could suggest itself to the mind even of a professional lawyer. The Court of Chancery would, no doubt, interfere in the case of children possessed of property, and perhaps even without property would enforce obedience to the father's wishes. But I do submit that the appointment of the mother as guardian would strike the mind of any man, at all events of any man not being a lawyer, as most unwise and impolitic, as leading inevitably to eternal bickering, animosity, and disputation. The mother was and would continue to be under the control of the Protestant grandmother and grandfather, and she could not be relied on to carry out the wishes of her husband. To a non-professional man like Mr. Keon, such a project as making the mother a guardian would seem utterly hopeless. But in truth, gentlemen, with all deference to his Lordship, we are not here to inquire whether the intention of rearing the children Catholics might not have been carried out by some other means, in some other manner, or by some other machinery. The question is, not whether the will was the most prudent, or the most skilfully drawn, but whether, taking it as it is, it be honest, fairly executed, and fairly obtained. To return to the evidence of Mr. Keon. He said he prepared the will at home. He was fiercely cross-examined by Mr. Whiteside. "Did you show it to the solicitor?" "No". "Who was with you when you drew it?" "Another clergyman might have been in the room". Ah! now Mr. Whiteside has him! another priest in the room! If Mr. Whiteside could only establish the interference of a second priest in the drawing of the will, I do not know what he would not have said, as he had exhausted the superlative degree in "fraud and concoction" on Father Keon. It is impossible to conceive what he would have said of the second priest; but all that in that case we should have heard is lost to us, lost to the public, lost to our delighted ears by the simple circumstance that Father Keon drew up the will himself without even the knowledge of any other person. Father Keon tells Maguire that he ought to appoint his brother as guardian, but, to remove any distrust of the brother's religious conduct, adds, "I will be there, of course, to see that all is right, but you ought to appoint him one of the

guardians of your children". The man at once assents, and that is what is called "undue influence". Mr. Keon said he read the will over to him, and now, gentlemen of the jury, comes the part of the case which shows that if this will were the contrivance of Father Keon, if it were extorted by him from Maguire, it was the most singular performance we ever heard of in a court of justice. "I read the document over to him (says Mr. Keon), and I left it with him to have it executed himself". Father Keon is represented as having extorted this document from the reluctant hands of Maguire. I suppose, gentlemen, you have heard some of those interesting trials in the Court of Probate, where the priest gets—what he deserves (laughter). Did you ever hear of a case of contrivance, where the party in possession of the will deliberately hands it over to the reluctant testator, and goes away, never again to return to look after its execution. If this be a case of an extorted will, if it be a case of fraud and contrivance, I can only say, that this designing priest, as described by Mr. Whiteside, was a very great bungler. I have already submitted to your judgment that, even if the will were obtained by refusing the rites of the Church, there was, under the circumstances, no "undue influence". I now come to another view of the case. I deny that the will was executed directly or indirectly under the pressure of a threat that the rites of the Church would be withheld. Whether or not Mr. Keon did enforce it as a moral duty by spiritual advice and spiritual administration, I care not. But the question for you is not what exhortation was given, not what advice was given, but whether the will was unduly extorted by fear that the rites would be withheld. Now, there is one simple fact, which, to any fair mind, must be conclusive on this point, namely, *that the rites were administered before the will was executed at all*. But (says Mr. Whiteside) the will was twice signed by Maguire. Why was this? Clear fraud! clear coercion! The first signature was (he contended) obtained under the threat of refusing the rites. Gentlemen, Mr. Keon told you himself why the will was signed the first time, simply as an expression of Maguire's wishes. But I admit that, in obtaining that expression, Mr. Keon made a sad mistake. He knew, no doubt, from the many attempts, so often discussed in Dublin, to coerce the religion of children, that it would be of importance to have some written direction from the Catholic father as to the religion of his children, and in the innocence of his heart, though he knew that the document not being attested, would have no more legal efficacy than a newspaper, he fondly believed it might have had some effect on the widow. He was, as I have said, sadly mistaken. The expression of the dying husband's wishes, unless

sanctioned by the force of the law, would have no more impression upon the relentless heart of that woman, who has sold her offspring, no more than it would have upon one of the pillars of this building. (Mr. Whiteside here objected to the statement of Mr. Barry that Mrs. Maguire had sold her offspring, but the Court held that Mr. Barry had a right to make that statement, being an inference of his own, drawn from evidence that warranted it.) I have listened patiently to Mr. Whiteside while he was vilifying the priest and slandering religion. Let him now listen patiently to me while he hears me conclude my observations of justice and truth (applause). The will signed without witnesses had no legal force, efficacy, authority, or power. Mr. Keon knew that, yet he freely, voluntarily, without promise exacted or condition imposed as to the legal execution of the will, administers to Maguire the rites of the Church, and leaves him at liberty to send for the will or not, to execute it or not to execute it—all constraint, if there were constraint, taken away, all terrorism, if there were terrorism, removed. Maguire was then as free an agent, as uncontrolled in his volition, as you or I at this moment. Gentlemen of the jury, remember the issue you are to try here, *was the execution of the will in the presence of Gilligan and Donohoe*, the voluntary act of the man. On the other side they are in this dilemma; they assert that this man, as a Catholic, believed the rites of the Church, when once administered, to be "a passport to Heaven", whether he was a sinner, or whether he was pure, (a doctrine that I hurl back with indignant denial in the teeth of the men that have asserted it in this Court;) and that he signed the will for the mere purpose of obtaining these rites, and not from any free sense of moral duty. But if their allegations were true, if he believed that he was sure of Heaven once he had gone through the form of these ceremonies, no matter what were his state or disposition, whether a repentant or impenitent sinner; if that was his belief, of course then it follows that once he got the rites of the Church, so coveted, so all-powerful, there was an end of all coercion, all constraint, he might defy the priest who had expended his power, and act, as Mr. Whiteside tells you he wished to act, at the dictates of his wife and her father and mother. There then is their dilemma, their difficulty, the inconsistency which ever accompanies and exposes injustice and falsehood. They say he executed the will for the purpose of getting rites, which were administered before its execution; that he executed the will in the hope of obtaining advantages, which, according to their own case, he believed he had secured to all eternity, before its execution.

Mr Barry then went on, with great argumentative power, to

analyze and comment upon the evidence of Mr. Keon, and his conduct in the transaction. He dwelt forcibly upon the fact that the testator was his all life a Catholic, and that he unquestionably died one, and it was natural to suppose he required no "undue influence" to declare his will, that his children should be reared in the faith in which he himself lived and died. As to the alleged "undue influence", he argued strongly on the fact that the priest had confessed and absolved the testator, and given him the viaticum and extreme unction, and in fact was altogether done with the penitent the day before the will was freely and voluntarily executed by Maguire in the presence of witnesses—a will in accordance with his whole life. All the evidence showed that the testator was a man of clear, sound, strong intellect, and not likely to be unduly influenced. If Mr. Keon were coercing a reluctant man, or carrying on a fraud or secret contrivance, he would not have, in the first instance, left the will with Maguire to execute it himself, and he certainly would not have sent it (as he did) by Judy Corr, who might show the will to Mrs. Maguire or the Lamberts, and thus defeat the entire plot, if there was any such plot. It was a mere accident that Mr. Keon was present at all at the execution of the will. No man contriving a will by coercion or fraud, could ever have acted in a manner so confiding, so open, so heedless of observation and discovery.

Mr. Barry, having gone through a variety of details of evidence, went on to say: One portion only of Mr. Keon's evidence remains for me to comment upon. It is a part that does not much affect the general case, but is of importance, because it shows into what falsehoods the difficulties of the case have betrayed our opponents, and because it shows that statements were put into the mouths of counsel, what the parties instructing them must have known to be scandalous fabrications. Father Keon is asked by Mr. Whiteside "Did you ever speak to that woman?" "Well", said Mr. Keon, "I did, and at the very same time she told me it was her intention to become a Catholic two years ago". He is immediately assailed with the question "Did you swear that at the last trial?" "No", said Mr. Keon, "but it is true". "Did you make affidavit of that?" "No, but is true". The priest then explained that in the discussion with the dying man, Maguire told him that his wife two years ago was inclined to be a Catholic, and Mr. Keon says that what occurred between her and him was "I asked her was that true, and she said it was". She is put into that box to contradict that calumniated, vilified man, who is accused of having fabricated that narrative for a purpose. She is put into that box. What is the question asked

of her by the astute counsel? "Were you inclined two years ago to become a Roman Catholic?" "No", says she. Who said she? But did they venture to ask her whether Mr. Keon did not tell her that, "Your husband tells me that you, two years ago, were inclined to become a Catholic?" They did not venture to tell that woman's contradiction. But the mode in which that gentleman was attacked, and his veracity impugned, for telling the pure truth, ought to give you an insight into the spirit in which the defendant's case is conducted. How can you upon anything coming from a source so tainted by falsification, Gentlemen of the jury, the hour of the day precludes me from discussing the case further. I submit to you, gentlemen of intelligence, impartiality, and justice, that there is nothing like "undue influence" in this case. Even suppose that the evidence sustained, (and it does not sustain) the man was told by the priest that the rites of the Church would be withheld if he did not execute the will, which he would object but the performance of a moral duty, I insist, and never shrink from the proposition, that that is not "undue influence". But no such thing occurred; there was neither threat, coercion, fraud, contrivance, or unfair inducement. Here is the evidence of the clergyman which is sought to be tortured, perverted, frittered away, and nullified. Listen to this language: "I heard his confession with the intention of inducing him or forcing him, directly or indirectly, to make a will. I never refused any sacrament because he would not make a will. I delayed giving him any sacrament because he would not make a will. I state, distinctly and unequivocally, that directly or indirectly I did not force him to make a will. He was always of the same mind with me, and he said that before I ever saw him, it was his mind always to rear his children as Catholics". This is the swearing of this gentleman. And in the face of this swearing, in the face of the facts of the case, the open, manly way in which all the transactions of the will were done, in the mass of evidence, the clearest, the most conclusive, you asked to pronounce that this was a will concocted by spiritual fraud, and effected by base contrivance. I might, perhaps, without exhausting the topics I have to deal with, discuss the subject still at greater length, but I feel I would not be justified in passing on your time longer, and indeed my own physical energies would scarce enable me to do so. If this be "undue influence", I don't know what due influence is. If it be "undue influence" for a minister of religion to enforce upon a Christian the performance of moral and religious duties,

gentlemen of the jury, you so find by your verdict, you will introduce a doctrine novel and appalling. I always understood it to be the boast of our laws, that all their rules are in harmony with Christianity, its principles, and its tenets, that Christianity, which we are told, is the great influence which guides and regulates our system—social, political, and legal. If this be “undue influence”, all that will be changed, a new doctrine will be introduced, the minister of God will shrink affrighted from the performance of his duties, lest, when he has performed them, he may be dragged into a court and branded as a “relentless knave”. The acts of the man who obeys the dictates of morality and religion will be impeached, while the acts of the impenitent sinner will pass without suspicion; religion will be a curse instead of a blessing to the bed of the dying Christian; the bonds of morality will be relaxed, the best interests of society shattered to the foundation. Gentlemen, I commit the case to your justice and your honour. Protestants you may be. I ask you, therefore, the more eagerly to vindicate the rights and assert the privileges of your Catholic fellow-subject. Remember, though he may differ from you in the form of worship, you and he kneel before the same God. Remember, though you may differ from some of the tenets of his Church, you owe respect and gratitude to that Church, for, during centuries of gloom, of barbarism, of persecution, and anarchy, she was the sole repository and preserver of that Christianity which you profess, of that civilization which you enjoy. If, gentlemen, you think that proselytism is for the benefit of our country, all I ask is, let it proceed by legitimate means. Address the reason of the man, do not kidnap the child; capture the mind of the adult, not the body of the infant; or, if children be the object, let them be obtained without making the widow false to the behests of her dying husband, and false to the claims of her living children. Let them be obtained without depriving the expiring Catholic of the dearest privilege of a Christian man, the right of providing after his death for the education of his children in the religion in which he hopes for his everlasting salvation. Above all, proclaim by your verdict that, however the storm of bigotry and intolerance may rage abroad, in the sacred precincts of the jury box a calm and imperturbable justice will reign, and truth, glorious and immutable, will triumph and prevail.

Mr. Barry concluded his address amid loud applause, which was vainly sought to be repressed by order of the Court, and was again and again repeated as the learned counsel passed through the hall.

Mr. Whiteside then rose and stated that he did not wish to

interrupt his friend Mr. Barry during his address, but at the same time he should not wish it to be understood that in referring to the case of Norton *v.* Relly he did so for any other purpose than to illustrate the doctrine of undue influence. He did not mean for one moment to institute any comparison between the conduct of the Rev. Mr. Keon and the clergyman in that case, who acted in such a discreditable manner towards the poor fanatic whom he had so deluded.

Baron Fitzgerald commenced his charge to the jury by recapitulating the leading facts of the case. He then stated the law as to the due execution and witnessing of a will, and said that if they believed the evidence, all the legal formalities had been complied with in this case. The person making the will should be capable of doing so; he must have sufficient discretion, and be a free agent. If either of these were wanting, the instrument propounded as a will would be invalid. The making of a will was a rational act requiring thought, judgment, and reflection more or less, according to the nature of the disposition, and where there was capacity to do a rational act requiring thought, judgment, and reflection, there was *prima facie* a sufficient discretion. There was in this case no evidence upon which they could rely as showing that at any period of his mature life Michael Maguire was a person incapable of doing a rational act requiring thought, judgment, and reflection. On the contrary, it was, as it appeared to him, a fair inference from the evidence at both sides, that Michael Maguire was, and to the last moment of his life was, a person capable of doing a rational act requiring thought, judgment, and reflection. If a person making a will possessed such a capacity and complied with the requirements of the statute, he must *prima facie* be presumed to do the act of his own free will. If, therefore, the particular instrument propounded before them could be successfully impeached, it must be upon something peculiar and special to the disposition itself, or to the circumstances under which, and accompanied with which, it was executed. It was uncontested that the will did not originate with the testator; it was suggested to him by another person, who took upon himself the preparation of the disposing instrument, having previously proposed himself as one of the guardians. In preparing the instrument, he departed from the express wish of the deceased as to the nomination of his brother as a guardian. He procured to witness the will a person unknown to the deceased; he was present at the execution of it, brought the will himself to the deceased for the purpose of being executed, and took it away immediately upon its execution. All these were uncontested facts, because they appeared upon the

evidence of Mr. Keon himself. It further appeared that during the interval in which this active interference was going on, Mr. Keon was the spiritual adviser of the deceased, and acting as such. It appeared that he was resolved, if necessary, to refuse one of the last rites of the Church, as to which it was sufficient to say that it was a solemn rite, desirable and desired by every devout or fervent Roman Catholic. He (Baron Fitzgerald) was of opinion that upon these circumstances appearing in the case, it became necessary that they should be satisfied that the deceased perfectly understood the disposition which was suggested to him; that, fully understanding it, he fully adopted and sanctioned it; and that the instrument, prepared correctly, embodied that disposition. He should warn them that, in considering the weight due to the circumstances to which he had called their attention, and in considering the weight due to the proofs which might exist in this case for the purpose of encountering them, they were never to consider them apart from the particular nature of the disposition propounded. They had been told by the eloquent counsel who opened the defendant's case, and for aught he knew it might be perfectly correct, that if these circumstances existed in the case of a will, in which the disposition suggested was the disposition of a large sum of money to the person proposing it, that would be almost conclusive to condemn the will, or would, at least, require an overwhelming amount of evidence to show the intelligence and the free will of the testator. That might be so. Then counsel went on and eloquently told them that the value of gold was as nothing compared with the value of the custody of three human beings. There was a sense, doubtless, in which that might be true, but he agreed with counsel for the plaintiff, that it was true in no sense applicable to the present case. Doubtless the wealth of the whole world was as but dust in the balance when weighed against the life, the education, and the future destiny of even one immortal being; but considered as a temptation or as an inducement to the corrupt principles and feelings of our common nature, who would think of comparing the possession of a heap of gold with the possession of the care and responsibility of the guardianship of three orphan children? Was there one in a thousand who would not covet the one? Was there one in a thousand who would covet the other? On the other hand—though the first impulse of every honest man, he would say, would be to undertake the care of destitute infancy from motives of benevolence or piety—misdirected or misguided it might be, or might be thought by some of them to be—experience showed that the goodness of a man's motives, so far from being security against the evil being done,

or the plain and most obvious duty neglected, in an attempt to secure that good, that, on the contrary, it was often a strong temptation to do evil and to neglect the plain and obvious duty; therefore, these circumstances were of real and substantial weight in considering the question before them, though they had not the weight imputed to them by the eloquent advocate who addressed them for the defendant. It was insisted on the part of the defendant that the proof given by the plaintiffs to instance the affirmative of the propositions stated was defective, and, further, that if it were necessary to resort to it, the evidence established fully there was not the discretion and free agency. The Rev. Mr. Keon told the deceased of the law which enabled him to appoint testamentary guardians, and suggested that he should do it. As to the mode of effecting the object, they observed that Mr. Keon took that entirely upon himself. On the second day Mr. Keon was aware that the man had a living wife, and that she was a Protestant. How far the suggestion of the brother of the deceased as a guardian was calculated to withdraw his attention from the appointment of the wife was for the jury to judge. Mr. Keon again passed by all reference to the wife, and suggested himself as guardian, and he said that offer appeared to be gratefully accepted. If the wife were appointed, and that the will directed the children should be reared Roman Catholics, a court of equity, his lordship said, would enforce the will. This consideration was important on the question whether the deceased fully understood the nature of the disposition suggested to him. His lordship referred to the fact of the name of the brother, Patt Maguire, having been inserted in the will by Mr. Keon after the father had objected to him on the ground that he was not attentive to his religious duties. This would bear upon the question of free agency. After some further observations on this point, his lordship said he should call their attention to what occurred to him was the great difficulty in the way of the plaintiff. It was this, that while Mr. Keon was the suggester of the will—while in the eyes of the penitent he was invested with the awful power of withholding absolution, and while he took the part he did in reference to the will, the jury were left totally in the dark as to what passed between him and the penitent on the three or four days on which he visited him. They were in the dark as to whether the power of refusing absolution was used, and, if used, how it was used, and with what effect upon the mind of the deceased. That was the real difficulty in the case. They must find that there was a free agency. After some further remarks upon the legal bearings of the case, his lordship laid the principal portion of the evidence

before the jury, and at the close of his charge called on them to find a true verdict upon the evidence, quite irrespective of the consequences of their verdict.

The jury retired at a quarter before seven o'clock, and in about twenty minutes returned into court, when the foreman stated there was no possibility of their agreeing.

Baron Fitzgerald told them they should retire and further consider the case, and that he would return at ten o'clock.

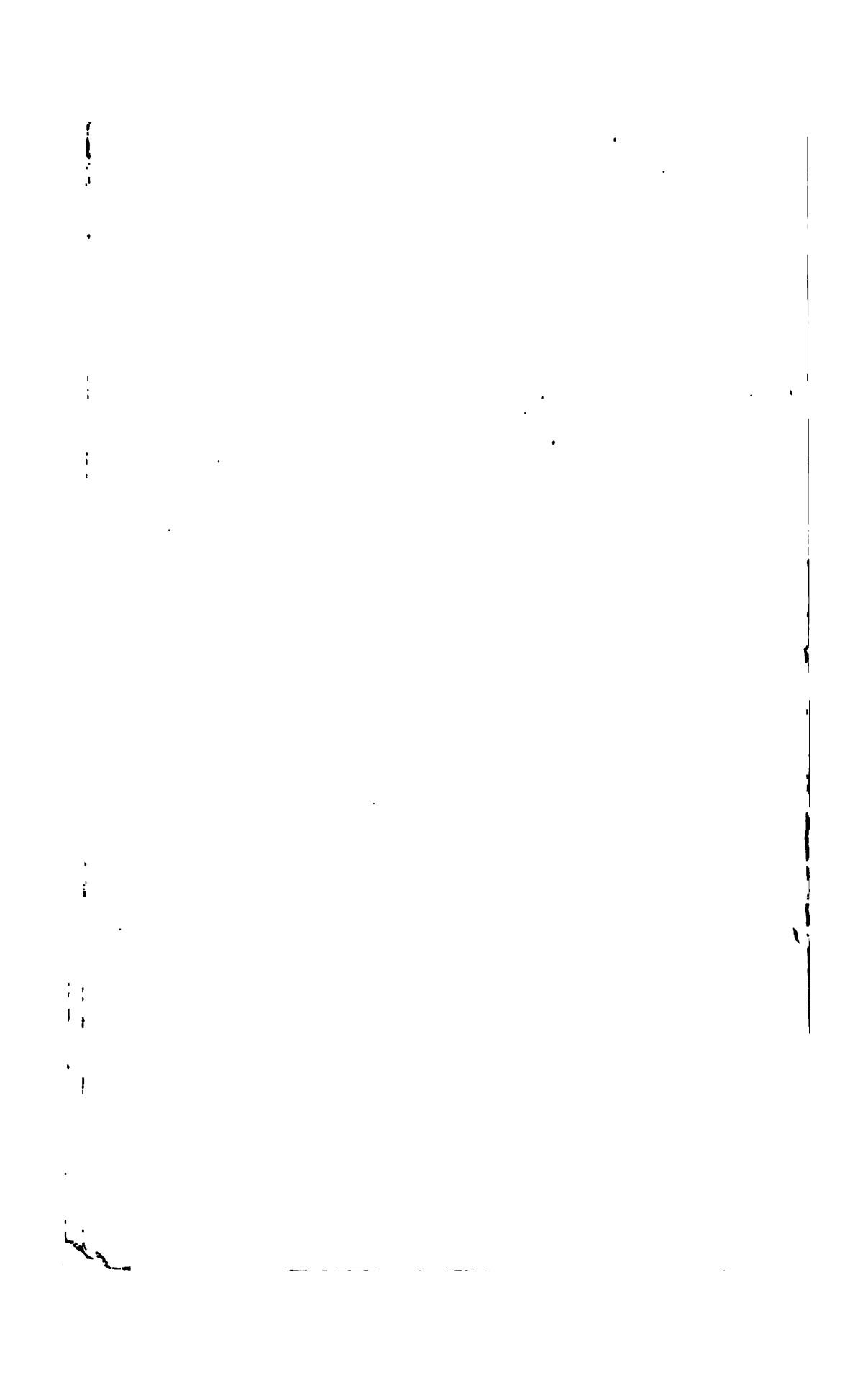
His lordship took his seat on the bench at ten o'clock, at which time the court was crowded. The jury were called out, and several of the jurors stated that it was useless to detain them longer, that they could not possibly agree. One juror stated that ten of them were agreed.

The jury were directed to retire.

Counsel on both sides left the case in his lordship's hands.

At half-past ten o'clock the jury were discharged.

Mr. Barry, Q.C., on leaving the court, was enthusiastically cheered, and a vast crowd followed him to his cab, with renewed cheering as he took his departure.



(From the *Times*.)

When Protestants claim, as they are wont to do, a moral superiority for the principles of the Reformation over those of Romanism, they do not always get the best of the argument. If they refer to the casuistry which effaced the landmarks of good and evil in the Middle Ages, they are reminded that the Church, unchangeable though it be, must not be judged by its practice in an epoch of darkness and corruption. If they appeal to the example of priest-ridden countries in the present day, the answer is that vice and irreligion have crept in for want of that very authority which the Church once exercised, but against which the heretical spirit of the age rebels, even where she appears to be supreme. If they challenge the most vulnerable doctrines of Romanist writers, they are told that a religion can only be appreciated in its practical working; and if they cite practical abuses which shock Protestant feelings, they are referred to the writings of Fathers and the decrees of Councils as the only fair test of what Romanism inculcates. From such tactics there is no hope of escape for a plain man, and the indiscreet champion of the Reformed faith probably retires from the contest in despair of coming to close quarters with his adversary. There are certain pretensions, however, which the Romanist clergy have consistently asserted, not only in esoteric works, but before the face of the world, as essential to their system. One of these is the right and duty of a Romanist, still more of a Romanist priest, to sacrifice all other ends and obligations to the paramount interests of the Church. It was this policy, magnified into colossal proportions by the circumstances of the time, that the Hildebrands and the Innocents maintained with a desperation that convulsed Christendom. It is this which has inspired most of the crimes that can fairly be laid to the charge of Popery, and which is the chief, perhaps the only, excuse for the suspicion with which its ministers are regarded by other communions. The conflict between the temporal and spiritual power, between our duty to God, as interpreted by priests, and our duty to man, as dictated by conscience and reason, is the greatest conflict of theory that has left its impress on history. There is no act too great and none too small to be embraced by it; it has divided the councils of statesmen, as it has disturbed the peace of private families. Wherever this issue is taken, however trivial the immediate occasion, we come upon a question of vital moment, and catch the echoes of a controversy that formerly distracted Europe. A very simple, and by no means singular, case which has just been tried in the Irish Court of Exchequer, exhibits the collision between the two principles in its least embarrassing form. A Roman Catholic named Maguire died last spring, leaving a widow, herself a Protestant, and three children. Both the parents appear to have been somewhat lukewarm members of their respective churches, for the mother took the children to be baptized at a Roman Catholic chapel, and the father, who seldom went to Mass, approved their attending a Protestant Sunday school. During his last illness, however, he sent for a priest, at his wife's suggestion, to administer the last rites. The Rev. Mr. Keon appeared, and soon discovered in confession that the children were imbibing heresy with their father's consent. Perhaps under like circumstances a Protestant minister would have warned the penitent against thus imperilling their faith, but a Roman Catholic priest has a more potent means of coercion, and seldom scruples to use it. Mr. Keon refused to give Maguire absolution until he had signed a will, consigning the children to his own custody, to be educated in the creed of the true Church. He availed himself of the wife's absence to bring a testamentary paper ready drawn up, provided two strangers to act as witnesses, and withheld the sacrament until it was duly executed. Mrs. Maguire first heard of the trans-

action through an attorney's letter, and declined to surrender the children to Keon, who claimed them as guardian, with two nominal co-trustees, under the will. He tried to get possession of them by a writ of *habeas corpus*, but failed, and was at last compelled to go before a jury in Kildare. No verdict could be obtained, and the case has been tried over again at Dublin with a like result. The legal problem to be solved was, of course, whether pressure put upon a dying man by one who professed and was believed by him to be capable of controlling his eternal welfare amounted to "undue influence". It has been held that, although a testator may have discretion enough to manage his ordinary affairs, yet that if he be actually deprived of his independence by the dominion of another mind in making his will, that will is invalid. Baron Fitzgerald pointed out that the disposition in question was contrary to every presumption of Maguire's real intention, and that Keon admitted the use of a spiritual terrorism calculated to interfere with his freedom of action. If this influence be not "*unjust*", in the sense of impairing the disposing faculty, it would be hard to say what would be. What is the ascendancy of a strong will over the shattered nerves of an invalid, compared with such a lever as this? It is idle to speak of such adjurations as though they were addressed to the judgment, when the motive suggested is not even *in pari materia* and has nothing in common with the act prescribed. Though the matter has been left open by the inability of the jury to agree, it is scarcely credible that any body of laymen will ever be got to pronounce that will valid. Here, then, we have in miniature the struggle for the mastery between two ethical systems. From the Romanist point of view nothing could be more laudable than the conduct of Mr. Keon in attempting to rescue three souls from perdition by threatening another with eternal ruin. It does not seem that he stipulated for any personal advantage, or resorted to any of those persuasions by which the Church of old managed to extend her domains. He only exerted his power for an object which he believed to be right in itself because favourable to orthodoxy and conducive to the salvation of the testator. And yet from the Protestant point of view he was guilty of treason against the sanctity of family affections and of apostacy from the universal religion of the human heart. The ties that bind a mother to her children are prior to all theological dogmas, holier than the laws of theological expediency, more imperious than the commands of theological authority. We accept with all its consequences the position that the parental relation is of no religion, and pity the mortal who has the presumption to pretend that he can bind or loose it at his pleasure. We respect our own clergy not the less because they are of ourselves by extraction and sympathy, but we should cease to listen to them if they employed the sanctions of religion in any other service than that of morality. We condemn as anti-social, and therefore anti-Christian, that code which palliates or justifies culpable acts done for the purposes of proselytism. If we are wrong, no doubt we are incurring a terrible responsibility; but, whether right or wrong, we have some reason to maintain that our moral standard, since it owns no superior, is higher than that of our opponents.

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